First Amendment applies *even* in judicial elections - *Mark S. Pulliam*

CALIFORNIA ★ POLITICAL
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Robert L. Giovati *on*
Liberal Compassion

Ray Haynes *on*
Retail Politics

The End of (California) History?

So it's all settled: the Golden State is 'liberal' — don't bet on it.

by John Kurzweil

Steinbeck, come home

Dispossessed farmers find the left a fickle friend

M. David Stirling

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An Opening for Common Sense

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— Irving Kristol

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CORRESPONDENCE

Overtime Blues

Mark Pulliam's excellent column, "The New Tammany Hall," (*CPR*, July/August 2002) was right on the mark (no pun intended). It should be required reading for everyone including school children.

However, I do have a slight disagreement with Mark regarding overtime. I had the "privilege" of working a number of blue collar jobs in my youth and so had the opportunity to see things from the labor point of view.

I'll never quite forget the summer job I had one year at a soft drink bottling plant back in the days of refillable bottles. It was physically exhausting, and, at times, dangerous work in a hot, chaotic environment, all for the munificent sum of $1.60 an hour. They'd work us 10-to-12 hours Monday and Tuesday to process all the bottles the drivers had brought in over the weekend. Wednesday they'd work us 8 hours, but Thursday and Friday they would work us just enough hours so that our total never exceeded 40 for the week.

To this day, I very much resent their exploiting this loophole in the law (it was a different state) to work us overtime during the first part of the week but evade having to pay us any overtime by working us less during the latter part of the week. However, if employees wish to contract with their employer to work a shorter work week in exchange for longer days, that's different and they shouldn't be entitled to overtime.

Mike Hoff
San Diego

Mr. Pulliam responds:

I thank Mr. Hoff for his kind comments. My objection to A.B. 60's "daily overtime" requirement is twofold. First, it puts California at odds with the federal overtime rules and the laws of virtually every other state, which require overtime only if an employee works more than 40 hours in a week. This anomaly creates serious compliance problems for national employers, contributing to the litigation trap that California has become.

Second, it deprives both employers and employees of flexibility to structure the workweek to accommodate personal obligations or business needs. For example, what if a worker wanted to take off early one day to attend his boy's Little League game, and make up the time the following day? Prior to A.B. 60, the employer could allow this without an overtime penalty so long as the employee worked no more than 40 hours in the week.

Now, if an employee works, let's say, ten hours one day and six hours the next, the employer must pay time-and-a-half for the two hours in excess of eight on the first day even though the employee works only 40 hours in the week. This is paternalism at its worst.

In a free society, adults should be able to set out mutually convenient work schedules with their employers without the interference of a coercive government bureaucracy. (The option favored by Mr. Hoff — the employees' ability to select a workweek consisting of four 10-hour days — is too rigid to reconcile employees' and employers' individual, ever-shifting needs.) I, too, worked at minimum wage jobs before I acquired skills and experience that an employer would value. The difference between me and Mr. Hoff is that I do not resent my early employers for the opportunities they gave me. CPR

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SACRAMENTO SPECTATOR

When the Legislature's Joint Legislative Audit Committee (JLAC) delved into the Oracle scandal, it was the committee's Democrat Chairman Dean Florez (Shafter) who offered some of the toughest grilling of witnesses appearing before the panel.

Florez, a moderate maverick bursting with ambition, has long been unpopular with his Democrat colleagues for his independence and his mainstream voting record. Although he engages the legislative process like an outsider, he's an insider who once staffed former state Senator Art Torres, now the chairman of California Democrat Party.

Florez was unceremoniously stripped of his chairmanship by Assembly Speaker Herb Wesson (Los Angeles) after Florez summarized his conclusions about the Oracle scandal in a Sunday op/ed in the *Sacramento Bee*. Florez essentially suggested the governor's office was dishonest (!).

Wesson said Florez was not sacked because of the Oracle hearings, but, rather, over absenteeism. Your *Spectator* suspects state GOP spokesman Rob Stutzman was closer to the mark when he told the *Bakersfield Californian*, "Florez was knee-capped."

Wesson has installed termed-out Assemblyman Fred Keeley (Boulder Creek) as new JLAC chairman. Keeley — widely thought to be seeking a job from Gray Davis — immediately suspended hearings the committee had scheduled to examine incompetence at Davis's Department of Veteran's Affairs.

While Democrats reportedly cheered (in a private meeting) Florez's being fed to the fishes, many Capitol observers marveled that Wesson would alienate a Democrat when he desperately needed every vote in his caucus to pass a budget. As of this writing, Wesson found himself looking for five, rather than four, Republican budget votes.

What's it take to get George Skelton to slobber all over you in his *Los Angeles Times* column? You might start by seeing to it that his favorite pier is fixed. July 8, Skelton, who spends vacations at Lake Tahoe, practically dubbed Gray Davis the next Teddy Roosevelt for his environmental record because Davis has pumped dollars into state parks. Among the upgrades was fixing a pier on Tahoe that Skelton began complaining about in his column four years ago for its state of disrepair.

While Skelton hailed the upgrades and improvements in park facilities during Davis' tenure, he conveniently forgot to mention that the upgrades were funded during Davis' first two years in office when the state was so awash in money that Gray ran out of ways to spend it. In other words, any governor would have fixed your damned pier, George.

Speaking of the *Times*, while Skelton was tying up at Tahoe piers earlier this summer, the *San Francisco Chronicle* and *San Jose Mercury-News* were scooping his paper on a daily basis during the Oracle scandal. The multiple "pay to play" Davis scandals has fostered a competitive atmosphere among newspapers — the sort of thing that's been missing for some time. Your *Spectator* gives the edge thus far to the *Merc-News*, which scores big points for being first to break the Oracle story.

— *A. P. C.*

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Steinbeck, come home

The Army Corps of Engineers twists its mandate; dispossessed farmers find the left a fickle friend.

M. DAVID STIRLING

AT THIS writing, the United States Supreme Court has just granted review of a case out of the Sacramento area known as *Borden Ranch Partnership and Angelo O. Tsakopoulos v. United States Army Corps of Engineers and Environmental Protection Agency.* While the Court's decision will address one of the critical issues of our day, the case arose from such unremarkable circumstances as to cause anyone with an ounce of common sense to question why it should be in the courts at all.

Back in 1837, a blacksmith named John Deere invented the first steel plow blade (as compared with the old cast-iron blade) to provide settlers moving west a powerful new tool to break up the Midwest prairies' hard-packed soil. By 1855, Deere was selling more than 13,000 steel plows a year. As farmers moved on to California, Deere's steel plow became an indispensable device in working the highly compacted virgin land. A century or so later, when the state's naturally mild climate and rich soil conditions were joined by the farmers' capacity to transport water to their crops through irrigation, the steel plow proved even more valuable.

Today, California produces 250 crops, which make the state the sixth leading agricultural exporter in the world. Agriculturalists have learned they can produce a more healthy, stable, and productive harvest of many of those crops if they are planted in soil that has been loosened and aerated to depths greater than 16 inches and, depending on the crop and type of soil, as deep as seven feet. To accomplish this, an elongated version of the steel plow is utilized, this time to perform what is called "deep plowing," a long-recognized California farming practice that allows for better water penetration and, in turn, the growth of deeper roots.

In 1993, Angelo Tsakopoulos and his Borden Ranch partners acquired 8,400 acres of ranch land south of Sacramento for the primary purpose of farming wine grape vineyards (representing a trend that would, in just a few years, make the region the largest wine grape-producer in the state.) However, because the land had been used for more than a century for cattle-grazing and surface-growing crops such as wheat, hay, and alfalfa, the soil had become so severely compacted that without deep plowing, irrigation water would never penetrate deeply enough to support the grapevines. So, over the next five years, and at substantial cost, Tsakopoulos called upon the steel plow to perform deep plowing, followed by vine planting and, eventually, production of wine grapes.

ONE DAY in 1998, the U.S. Army Corps of Engineers came onto the Borden Ranch property and cited Mr. Tsakopoulos for violating the Clean Water Act (CWA) by deep plowing without a permit and by introducing a pollutant into the land. Incredulous, Tsakopoulos asked how the federal CWA, which provides the Corps with jurisdiction to regulate "navigable waters of the United States" — rivers, lakes, streams, or hydrological connections to them — could be applied to his land, when the only moving water within his vineyards occurred in drainage swales during the rainy season. The Corps said the CWA *also* allowed regulation of rain-filled drainage swales, thus demonstrating the agency's highly expansionist interpretation of the Act. Clearly, Congress never intended the Act to bring about federal jurisdiction over draining rain water.*

Tsakopoulos further inquired how the normal

M. David Stirling is vice president of the Pacific Legal Foundation (www.pacificlegal.org), a public interest legal organization working in the courts to advance the cause of environmental common sense and balance. He may be reached at mds@pacificlegal.org

**Tsakapoulos' suit in federal district Court did not challenge the Corps's dubious interpretation of the CWA, so this basic jurisdictional question, not before the Supreme Court in this case, must await a future challenge.*

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THE FRONT LINE

Even business sees something's up

Recent travels around the state by *CPR* writers and editors brought signs of a mood swing among the people — a sense that California may not be a bastion of liberal nutballs after all. Of course, people have been calling California the land of fruits and nuts for a long time, not with reference to the state's agricultural production.

But actually the last few years of Democrat predominance have been exceptional: other than the 16 years of the Pat (1958-66) and Jerry (1974-82) Brown administrations, Republicans held the governor's office since 1938.

Addding it all up, Democrats controlled the Capitol's corner office for only 22 years during the entire 20th Century. But when Gray Davis moved in after 1998, the major media (along with many Republicans in the nation's capital) pronounced California lost for good, never to be recovered.

They should have checked their history. Whenever leftists control everything, and can actually put their plans into effect, things get real bad. Government spending and bureaucracy spirals up, markets collapse, quality of life declines. To be successful, the left seems to require a Republican executive to blame for business cycles or to investigate for scandals.

Operating from a sense of history in 1998, one might have predicted that by 2002 surplusses would be flickering memories, that

Democrats would be demanding huge tax increases, that vast outlays would have failed to fix what voters thought they voted to fix four years earlier (i.e., education), that the Democrat executive would be blaming everyone and everything except himself, and, maybe even that a market or two (it turned out to be electricity) would have become dysfunctional.

But, even so, following the 1998 election, conservatives were discouraged. The movement groups — the California Pro-Life Council, the National Rifle Association, the Howard Jarvis Taxpayers Association, the National Tax Limitation Committee, the California Republican Assembly, and various conservative think tanks — all seemed in disarray: shrinking in terms both of members and activities. Business, meanwhile (always the unfaithful "significant other" in the coalition), had jumped into bed even more willingly than usual with the left — even *before* the election.

Today, however, that has all changed. Recently-begun NRA political training seminars in California are registering record turnout. Family advocates are seeing a renewed interest in "family values" issues. And business shows signs of actually figuring out they've been had, like a rich, unfaithful wife suckered out of her money by a grinning gigolo.

Recent polls show the Simon campaign starting to take off (even *Field* has him within striking distance). And the grassroots troops are excited. It may take only a little bit more to push this election over the top for Republicans. The SUV bill (see "Legislative File," page 7) — especially if repeal makes the ballot — may be just the catalyst, just the right dose of juice needed to do it.

CPR

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farming practice of deep plowing could require a permit under the Clean Water Act, and on what basis he could be charged with introducing a pollutant into the land. The Corps's answer is at once a masterpiece of sophistry and absurdity. In effect (and with an irresistible added touch of author's sarcasm), the Corps said: Plowing causes the addition of a "pollutant" (dirt) from a "confined and discrete conveyance" (tractor and plow) into "navigable waters" (depressions in the ground) at "specified disposal sites" (the plowed land). This, by the way, is the same Army Corps of Engineers that has been dumping 200,000 tons of toxic sludge into the Potomac River every year since 1989, claiming the sludge actually protects endangered shortnose sturgeon by forcing them to flee the polluted area and escape fishermen. (See: *Washington Times,* June 19, 2002.)

When Tsakopoulos's challenge to the Corps's demands came to trial in federal district Court in Sacramento, the judge, deferring fully to the agency's interpretation of the CWA, found 358 separate deep plowing violations, and ordered Tsakopoulos to pay either a fine of $1.5 million or pay $500,000 and finance an environmental restoration project on his ranch. On appeal, the Ninth Circuit Court of Appeal, in a 2-1 decision, affirmed the trial Court.

In its review, the Supreme Court will address the seemingly mundane questions of whether deep plowing normally dry, seasonally wet, ranch land, which involves turning over dirt in place, constitutes the addition of a pollutant under the CWA, and whether such activity is a normal farming practice, and thus exempt from regulation under the CWA. Yet, the import of this case goes far beyond a farmer's use of the plow.

The experiences with abusive government shared by the founding fathers caused one of the earliest American advocates of individual freedom — indeed, the leading champion of the Constitution — James Madison, to comment: "I believe there are more instances of the abridgement of the freedom of the peo-

WHAT YOU HAVEN'T BEEN TOLD ABOUT GUN CONTROL

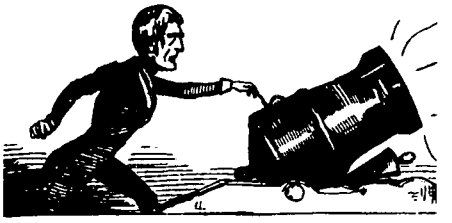
By SAM PAREDES

A western journalist in Moscow in the 1930s, upon exiting a government briefing on farming in the USSR, remarked, "It's all true, except the facts" — rather like Republican election experts' routine warnings that "pro-gun" is a loser in the Golden State. If we consult the political pundits, it all seems so true ... except the facts.

Fact 1: Anti-gun zealotry plays havoc with Democrats' base constituencies. Georgia Democrat Senator Zell Miller and Democrat governors of half a dozen states say Al Gore lost Arkansas, Tennessee, and West Virginia, all *usually* reliable Democrat states, due to his push for more gun control. Meanwhile Virginia Democrat Mark Warner was elected governor on a pro-gun platform.

Sam Paredes is executive director of Gun Owners of California.

Fact 2: Americans like guns. A recent Democracy Corps poll shows that "swing voters" (those that decide most elections) have a favorable opinion of the NRA and are inclined to vote in line with its recommendations. Even Democrat strategist James Carville says, "I don't even think there's a Second Amendment right to own a gun ... But, I think it is a loser political issue ... I think the issue has not been good for us. On top of that, I like guns." A Time/CNN poll shows 61 percent of Americans want airline pilots armed. Unsurprisingly, the measure allowing pilots to be armed passed both houses of Congress with wide bipartisan support.



Fact 3: California resembles America on guns. If pro-gun was a GOP loser, would not Democrats press the issue, precisely *now* with elections looming, an unpopular governor, a glum electorate, and the shadow of scandal clouding the donkey Party's California campaigns? So why after three years of more anti-gun laws than ever before, has *no* anti-gun bill passed the Legislature in 2002? Lots have been introduced; all have failed.

The difference is that Assemblymembers Canciamilla, Cardoza, Florez, Matthews, Papan, Reyes, and Thompson — all reliable anti-gun votes in the past — have laid off. Their districts resemble the states Gore lost on this issue. These Democrats seem to have heard something. Tony Quinn, are you listening? CPR

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LEGISLATIVE FILE

The liberal bag of tricks

Every legislative year, it seems at least one bill manages to infuriate Californians across the state. Which it will be is a little hard to predict. After all, each session is packed with draconian mandates, ridiculous over-the-top regulations, and boondoggle spending — all, one might think, capable of lighting voters' fuses. The media ignores most of them, and the precise selection process by which this or that particular exercise in anti-public policy gains the public spotlight remains a mystery.

This year's bill is Assmblywoman Fran Pavley's AB 1058 (D-Woodland Hills), a measure that goes after Sport Utility Vehicles by requiring the State Air Resources Board to adopt regulations that achieve "maximum feasible" and cost-effective reductions of "greenhouse gas emissions" — carbon dioxide. No catalyst or bolt-on device exists to remove carbon dioxide from vehicle tailpipes, so the only "maximum feasible" action the Board could recommend would be to reduce the size of vehicles or the number of miles driven in California. This is precisely the bill's goal.

Pavley's creation somehow worked its way through the state's political alchemy to surface as the season's public horror number one. Given SUVs' growing popularity, once they learned of the bill, motorists were quick to respond. The outcry against AB 1058 became overwhelming: shouted in headlines, dominating radio shows, fueled by blast faxes and newspaper and radio ads. Well-known auto dealer Cal Worthington ran his own commercial against it. And with every push for motorists to oppose came the reminder to mention "AB 1058": "Hey, have you heard about AB 1058?"; "Today we're talking about AB 1058"; "Call your legislator and oppose AB 1058."

The opposition began to frighten even some of the Legislature's more stalwart leftists, and the bill stalled on the Assembly floor. But, not to be thwarted by a mere outpouring of public disgust and opposition, the bill's champions reached into the legislators' bag of tricks to get the measure moving again. Presumably calculating that lightning probably would not strike the same dumb idea twice, they simply wrote 1058's language into another bill and, bypassing the usual committees, rushed it to the floor.

While AB 1058 sat motionless in the Assembly — members telling voters, "You see, I listened. I didn't vote for AB 1058" — the empowering language, now in AB 1493, passed both legislative houses and, at this writing, sits on the governor's desk.

And Gray Davis plans to sign it. The governor's approval ratings are 'way down, even among many Democrats. The Enviros, for instance, are upset that Davis received sizeable timber industry campaign checks. Somewhere they seem to have gotten the idea the governor sets policy in response to campaign cash. In June, Sierra Club Director Carl Pope criticized Davis for accepting the donations and said the Club, which endorsed Davis in 1998, "has not decided what to do in this race."

To make matters worse, Republican Bill Simon's surprise opposition to off-shore oil drilling put Davis on the defensive in what he assumed was his home turf. What to do? Sacrifice SUV owners and makers, of course. Maybe the unruly Enviros will rejoin the Davis bandwagon. And maybe the union auto workers won't connect the dots leading straight to them and their jobs.

And thus policy is made, or, rather, inflicted, no matter the opposition, on the people of the Golden State. CPR

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ple by gradual and silent encroachments of those in power than by violent and sudden usurpations." But Madison did not make that comment purely as an observation of past human nature; he made it as a warning to future generations of Americans. Thomas Jefferson expressed the same concern when he said: "The natural progress of things is for liberty to yield and government to gain ground."

MR. TSAKOPOULOS'S loss of the individual and economic freedom to farm grape vineyards (or any crop he chooses) because of the enforcement of overreaching regulations by "those in power" — in this case, power-grabbing bureaucrats in the Army Corps of Engineers — is a vivid illustration of the merit behind the founders' concerns. The case raises a critical issue because such expansive, intrusive, and wasteful enforcement by the federal regulatory bureaucracy is not limited to an isolated grape vineyard in California's Central Valley. Such overbearing, "big government" intrusiveness has become common practice among federal "land-use" regulatory agencies, including, in addition to the Army Corps, the Environmental Protection Agency, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service (See my column: "Killjoys" (*CPR*, July/August 2002), describing the Fish & Wildlife Service's "anti-people" campaign to protect a shorebird known as the Western Snowy Plover under the Endangered Species Act.)

Mr. Tsakopoulos possesses the financial wherewithal to make his a national test case. But there are many others across the country who do not, people who, innumerable times a day, endure these federal regulatory enforcement bureaucrats wreaking havoc on their lives and livelihoods. These bureaucrats' authority as agents of the federal government provides them enormous leverage and unlimited financial resources (paid by taxpayers, of course) to coerce people into compliance with their demands. Because resistance or opposition can mean negative publicity, hostile treatment from zealous environmentalists, thousands of dollars in expert and attorney fees, and months, if not years, of litigation, most people simply give in or capitulate, rather than fight. At the same time, the bureaucrats' freedom-grabs, while prolific, are "gradual and silent" in that few Americans are aware of the breadth and depth of the regulations they enforce, much less their increasing heavy-handedness.

A Supreme Court decision (probably in late Spring 2003) favoring Tsakopoulos *should* be sufficiently instructive to federal land-use regulators like the Army Corps that unreasonably expanding their authority beyond that given by Congress will not be tolerated.

Tend the Land

Who ever thought that we would gaze
Upon a west that's all ablaze,
With trees and deadwood burning high
And smoke plumes rising to the sky.
But yet today huge fires rage
Through aspen, pine, dry grass and sage
Because the feds don't understand
The proper way to tend the land--
Build access roads into the bush,
Clean out dead trees and underbrush
Thin forests so when lightning hits
Huge fire storms won't give us fits.
What's lacking here is common sense
From eco-wackos just too dense
To know their policies raise hell
With mountain growth and forest dell.
With birds and bees and animals
With whom they claim to be such pals.
So as you watch these fires burn,
Blame bureaucrats too dumb to learn

— by Joy Skilmer*

BUT INSTEAD, the overbearing regulators will, like agile running backs looking for holes in the defensive line, take advantage of any loophole in the Court's decision, once again putting the burden to oppose their next power-grab on some other productive citizen.

The president and members of Congress can take back our government from the bureaucrats. But until they find the political wisdom and courage to do so, citizens will continue to fight "those in power" in the courts. CPR

** The political verse of Joy Skilmer, né Lyn Nofziger, is available from MND Publishing, 573 Marina Rd., Deatsville, AL 36022. Keep up with Lyn's "musings" at: www. lynnofziger.com*

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Stammerin' coverage at the *L.A. Times*

The Grey Whale provides its favorite cardinal kid-glove reporting when he needs it most.

GEORGE NEUMAYR

In 1994, Paul and Sue Griffith, the parents of a child abused by Fr. Ted Llanos, "took the story (of abuse) to a *Los Angeles Times* reporter, who declined to write about it," reported Ron Russell earlier this year.

Russell, a reporter for the *New Times,* a Los Angeles alternative weekly newspaper, did not reveal the name of the *Los Angeles Times* reporter. Which led me to wonder: Was it Larry Stammer, the *Los Angeles Times* reporter in Cardinal Roger Mahony's pocket? Recall that Mahony, in an e-mail leaked to the press in late spring, had written that Stammer "stands ready to help if we have a story we want to get out," and is planning to do "helpful" stories on the "seminaries."

Well, it turns out Stammer is also useful in *not* getting stories out. I called up the Griffiths to find out if Stammer was the reporter who ignored their son's story in 1994. "Larry Stammer was certainly the reporter we went to," Sue Griffith replied. "The *Los Angeles Times* wouldn't touch the story at that time."

After the *Los Angeles Times* ignored them, the Griffiths "turned to the *Long Beach Press-Telegram,*" reported Russell. The smaller newspaper reported the story, and within "weeks, more than two dozen men came forward to say that Llanos had also abused them as teenagers," wrote Russell.

The *Los Angeles Times*' coverage of the Church scandal is still embarrassingly thin, leaving much of the story to the *New Times.*

"Our coverage has been reprehensible!" an *L.A. Times* editor confided to *New Times* columnist Rick Barrs. "You can tell that the powers-that-be here want to protect Mahony by the third-string reporters who are assigned to the story. Come on, the most incriminating stories have been played down, or written in such a way as to practically exonerate the cardinal. I'm a Catholic, and it's sickening the way Mahony's been summoning Larry Stammer over to be his bend-over boy, how the paper's been playing Stammer's pieces as if they were out of the mouth of God. Even a f---ing racketeering suit against the Church can't make Page One."

The *Los Angeles Times* didn't even find fit to report on the front page that a priest-molester named Father Carl Sutphin — a fact known to Cardinal Mahony for at least a decade — had recently lived at the cardinal's cathedral-complex apartments and served as the cardinal's associate pastor!

Even *Los Angeles Times* columnist Steve Lopez, who had pounded Mahony early on, fell silent during the crucial month of April. Had he been told to knock his anti-Mahony opining off? No, he was on vacation, leaving Stammer behind to supply thumbsucking pro-Mahony "news analysis" on the scandal.

Needless to say, the *New Times's* Ron Russell hasn't taken a vacation during the biggest story of the year.

♣ ♣ ♣

Bill Simon's low-key gubernatorial campaign has disoriented California journalists eager to pigeonhole the candidate as a conservative extremist. Unable to find extremism in Simon, they have had to search for extremism in the people and groups around him.

As the summer began, the journalistic stretches grew more desperate.

Laura Kurtzman of the *San Jose Mercury-News* made the astonishing discovery that Bill Simon is "anti-abortion" and gives money to a group for homeless pregnant women in distress. And it gets worse: it

(Please turn to page 31)

George Neumayr is California Political Review's press critic.

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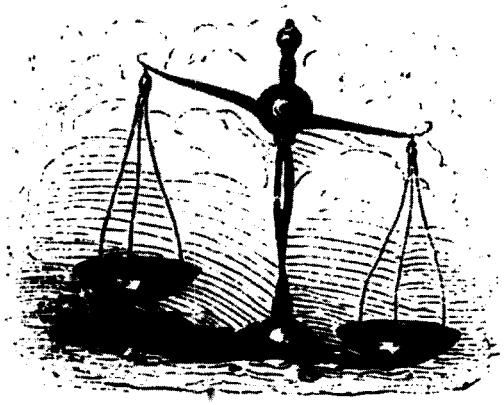
In the name of 'judicial ethics,' incumbent judges keep voters uninformed by censoring electoral challengers. But a new U.S. Supreme Court ruling signals a return to balance.



FREE SPEECH
DEMOCRACY'S LINCHPIN

Mark S. Pulliam

DO CRITICS of our reigning judicial oligarchy have First Amendment rights? The judicial establishment would like the answer to be "no," at least when it comes to statements made by candidates in the course of judicial elections. The U.S. Supreme Court, however, has just ruled otherwise. In a decision issued June 27, a sharply-divided Court held by a 5-4 vote in *Republican Party of Minnesota v. White* that campaign speech by judicial candidates can be restricted only if it is "narrowly tailored" and necessary to serve a "compelling state interest." The majority in *White* concluded that the restriction challenged in that case satisfied neither requirement. Although the case involved the state of Minnesota, it will have far-ranging impact, in California and other states, for the reasons explained below.

All state court judges in Minnesota are elected. A Republican attorney named Gregory Wersal decided to run for the Minnesota Supreme Court. Wersal's campaign themes were that he favored strict construction of the state constitution, that the incumbent justices disregarded the Legislature, and that their rulings lacked common sense. His campaign strategy was to obtain the Minnesota Republican Party's endorsement, and to appeal to Republican voters by criticizing the court's rulings on crime, welfare, and abortion. Unfortunately, Minnesota's Code of Judicial Ethics (promulgated by — guess who? — the Minnesota Supreme Court) prohibited every element of Wersal's campaign strategy: in Minnesota, judges and judicial candidates cannot attend or speak at partisan political gatherings; cannot identify their membership in a political party; cannot seek, accept, or use a political party endorsement; and, in an Orwellian twist, cannot "announce" their views on disputed legal and political issues. This last provision is referred to as the "announce clause." (The incumbent-friendly Minnesota ethics rules also forbid judges and judicial

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candidates to solicit campaign contributions personally!) When Wersal first ran in 1996, he was forced to withdraw after a complaint was filed against him that could have resulted in the imposition of discipline, including his disbarment. He could not risk losing his law license. In 1998, when he decided to run again, he concluded that the ethics rules, if observed, would doom his campaign, but that they were unconstitutional. Accordingly, Wersal filed a lawsuit in federal court to enjoin the rules on the ground that they infringed his rights to free speech and free association under the First Amendment. The trial court upheld the rules, as did the Eighth Circuit Court of Appeals, even though similar restrictions have been ruled invalid in Florida, Arkansas, and Illinois. Unable to implement his campaign strategy without jeopardizing his ability to practice law, Wersal lost his race.

In *White,* the U.S. Supreme Court held that the so-called "announce clause" of the Minnesota ethics rules (the only part of the rules that the U.S. Supreme Court agreed to hear) was unconstitutional. Justice Antonin Scalia, writing for the majority, reasoned that full and unfettered campaign speech lies "at the core of our electoral process and of the First Amendment," and that "[w]e have never allowed the government to prohibit candidates from communicating relevant information to voters during an election." The majority in *White* left open the possibility that states, in the interest of preserving the integrity of the judiciary, could prohibit judicial candidates from making "pledges or promises" to the voters on how they would vote as a judge. The only remarkable aspect of the ruling is that four justices — John Paul Stevens, David Souter, Ruth Bader Ginsburg, and Stephen Breyer, all liberals — disagreed. The dissenters refused to accept that judges — even when they are elected — should ever be accountable to the voters. To them, the need for "judicial independence" transcends judicial candidate's free speech rights because, they believe, merely communicating personal opinions on legal issues destroys the candidate's claim to impartiality if elected. In sum, the dissenters believe that judges are inherently different (read: better) than other office-holders, and should therefore be held to different (read: more cloistered) rules than other candidates and government officials. This elitist attitude is as arrogant as it is self-serving. How are voters supposed to make an informed decision if the candidates can't communicate their views? What purpose is the election supposed to serve if the voters are denied relevant information?

Justice Antonin Scalia wrote for the majority that 'we have never allowed the government to prohibit candidates from communicating relevant information to voters.'

One reason the general public is not more aware of, and concerned about, judicial activism is that, unlike the debates and elections that determine representation in the legislative and executive branches, the public is largely excluded from the selection of judges. In fact, other than conscripted service as a juror, or experience as a litigant, most citizens never see the inside of a courtroom or have any contact with a judge. Federal judges are appointed for life, subject only to initial Senate confirmation. At the state court level, where the overwhelming majority of judges sit, procedures for judicial selection vary widely by state. Nationwide, about half of all state court judges are initially selected through partisan or non-partisan elections, and the other half are initially appointed, sometimes subject to a "retention election" later on, in which the judge faces no opponent, only the "yes" or "no" of the voters. (In California, all appellate court judges are appointed, subject to periodic retention elections, whereas trial court judges can be either elected or appointed to an initial six-year term, subject to non-partisan elections thereafter.)

JUDICIAL ELECTIONS, in the 39 states where they exist in some form, are unlike any other type of election because most states severely restrict what judicial candidates can say. As a result, even with elections, public involvement is usually superficial. Although Minnesota's rules were more onerous than the norm, 30 other states impose some type of restriction on judicial campaign speech. The blatantly unconstitutional McCain-Feingold contribution

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limits pale in comparison to the muzzle that state laws routinely impose on judicial candidates, not just sitting judges. California is no exception. Yet,

Ron George

like most machinations of the judicial branch, these "gag rules" have largely escaped public scrutiny and criticism. The "Code of Judicial Ethics" adopted by the California Supreme Court in 1996, pursuant to authority conferred by Proposition 190, governs the conduct of judges and judicial candidates, which means "a person seeking election for or retention of judicial office by election." A candidate becomes a "candidate" subject to the Code of Judicial Ethics even prior to formal filing or formal declaration of candidacy: "A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy ...."

WHAT RESTRICTIONS do judges and judicial candidates face in California? The Code prohibits membership by judges in "any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation" (with exceptions only for religious organizations, the military, and "nonprofit youth organizations," *i.e.,* the Boy Scouts). Judges and judicial candidates cannot publicly endorse or publicly oppose a candidate for nonjudicial office (although they are free to do so for fellow judges), cannot contribute more than $500 per year to any political party or candidate, and cannot contribute more than $1,000 per year to all political parties and (nonjudicial) candidates combined. The speech restrictions germane to judicial election campaigns, less severe than those challenged in *White,* are set forth in "Canon 5(B)", which forbids candidates for election or appointment to judicial office to "make statements to the electorate or the appointing authority that commit or appear to commit the candidate with respect to cases, controversies, or issues that could come before the courts ...." Rule 1-700 of the Rules of Professional Conduct applicable to attorneys, also promulgated by the California Supreme Court, states that a lawyer "who is a candidate for judicial office in California shall comply with Canon 5." (Gray Davis brags that he has appointed only judges who are "pro-choice" regarding abortion and who support the death penalty, but the only way he could know this is if his appointees violated Canon 5(B) by indicating how they would rule in such cases in the future.)

What does Canon 5(B) mean, as a practical matter? Quite a bit. A few years ago, a conservative lawyer in San Diego, Gerald Hokstad, decided to run against a Superior Court judge who was up for election, prompted by that judge's outrageous and (at the time) unprecedented ruling against the Boy Scouts in an Unruh Act discrimination case by a homosexual male who was denied the opportunity to serve as an adult leader. (*See:* "Be Prepared," *CPR,* Fall 1994, for a discussion of the decision.) Hokstad expected the public to share his outrage at the decision (which was then on appeal and was ultimately reversed in the wake of the California Supreme Court's decision in *Curran v. Mt. Diablo Council,* discussed in the May/June 1998 *CPR),* and, therefore, intended to make the case the centerpiece of his campaign. After Hokstad pulled his papers, however, he realized that discussing the controversial decision as a candidate would expose him to discipline, depending on whether he won or lost, by either the state Bar (if he lost) or the Commission on Judicial Performance (if he won). Because the case was still pending, and because he might have occasion to rule on similar cases were he elected, Canon 5(B) put the topic "off limits." Without the benefit of a "hot button" campaign issue to overcome the advantage of incumbency, Hokstad lost the election. Canon 5(B), in other words, was an effective gag on campaign speech. Under the reasoning of *White,* however, Canon 5(B) is of questionable validity. It will be interesting to see if the California Supreme Court revises it voluntarily. Don't count on it. In *White,* Chief Justice Ron George participated in a "friend of the court" brief in defense of the "announce clause."

One has to wonder about the real motives for the

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censorship of campaign speech. Restrictions on campaign speech by judicial candidates are invariably enacted by incumbent judges rather than the Legislature. Is the motivation to protect the "independence of the judiciary," as is often argued? Or is the brotherhood of the robe simply trying to entrench itself, as any guild might be inclined to do?

Or is the motivation more nefarious? Is the activist judiciary, steeped in a left-leaning legal culture disdainful of the bourgeoisie, deliberately insulating itself from public scrutiny? The truth is probably a combination of all the above, plus a dose of pious self-aggrandizement to boot. The judiciary tends to regard itself as a type of priesthood rather than a co-equal branch of government.

ALTHOUGH I think *White* was an easy case, and correctly decided, I don't want to leave the impression that the larger topic of judicial selection is clear cut. It isn't. There is no ideal way to pick judges, and all the various methods have pros and cons. Even among conservatives not enamored of the status quo, some strongly favor appointment of judges whereas others favor election. The twin goals of "independence" and "accountability" involve an unavoidable trade-off. Under the appointment model, exemplified by the federal courts, judges are free to apply the law, even if the result is controversial, without fear of public reaction. This is good when the legitimate constitutional rights of an individual are being threatened by a hostile majority, as often happens in the area of land use regulation and property rights. The disadvantage is that judges unaccountable to the voters are also free to engage in reckless and indefensible activism, such as the recent Ninth Circuit holding that the Pledge of Allegiance is an unconstitutional establishment of religion. (Left-wing USC law professor Erwin Chemerinsky is virtually alone in his support of the Court's ruling. Even the decision's author seems to have changed his mind!)

On the other hand, selecting judges on the basis of contested elections tends to make the judicial branch even more political than it already is, and frequently turns judicial elections, especially at the appellate level, into high stakes prizes for the plaintiffs' bar. In states where judges are elected, trial lawyers can and do spend enormous amounts of money to install "friendly" judges. Control of a state's supreme court translates into control of the state's entire judiciary (and civil justice system). The surest and quickest way to convert a state's civil justice system into an ATM machine for trial lawyers is to hijack the supreme court. In 2000, judicial candidates spent more than $45 million in state supreme court campaigns, not including "independent expenditures" and "issue" advertising by various interest groups, and the trend is toward even more spending. This is a serious concern. On the other hand, without retention elections, California voters could not have voted Rose Bird and her activist colleagues off the California Supreme Court in 1986. In addition to ridding the Court of three activist judges, the anti-Bird campaign was an invaluable civics lesson, educating the public about the Court's rulings and provoking a healthy discussion about the judiciary's proper role in a democracy.

My own view is that California's judicial selection process (although far from perfect) is a good compromise. Most judges are initially appointed, making the governor politically accountable for bad appointments but without requiring judges to raise money, campaign, and appeal directly to the voters. The voters retain a check over a rogue judge through retention elections for appellate judges and contested elections for trial court judges. Wouldn't it be nice to see Stephen Reinhardt's name on the ballot?

Judges are — or at least should be — different from ordinary politicians in important respects. They are supposed to apply the law, not make it.

Rose Bird

They are obligated to decide cases impartially, without predisposition or prejudice. Nevertheless, judges, particularly appellate judges, unquestionably make policy, and, arguably, wield more power than legislators. Consider the asbestos debacle, to pick

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one example. In the 1960s, activist courts invented a new form of lawsuit — strict liability for "defective" products, in the absence of negligence. Enterprising personal injury lawyers quickly took advantage of the new legal claim to sue asbestos manufacturers on behalf of exposed workers, despite the existence of workmens' compensation benefits.

THIS WAS the first wave of the litigation tsunami that continues to engulf our economy. Asbestos litigation, which produced a generation of fantastically wealthy contingent fee lawyers, has mushroomed out of control. More than 50 companies have been driven into bankruptcy. More than 200,000 asbestos-related cases are pending, and that number is growing at the rate of more than 50,000 new cases per year. The total number of asbestos cases, most brought by individuals who are not even sick, may reach 2.5 million. Overwhelmed by the sheer volume of lawsuits, the judicial system has sacrificed traditional legal rules (such as proof of causation) in the interest of efficiency, making the system even less fair to corporate defendants. The incredible volume of bogus claims is making it impossible for the small number of truly sick claimants to receive adequate compensation. The ultimate price tag for businesses as a result of asbestos litigation could reach $275 billion. By any rational measure, asbestos litigation is an unmitigated public policy fiasco.

By any rational measure, asbestos litigation is an unmitigated public policy fiasco. The point : asbestos litigation was created by the judicial branch.

The point that bears emphasis is that asbestos litigation was created by the judicial branch, without public debate, without the benefit of legislative deliberation, and without public accountability. There are, unfortunately, many other examples of judicially-created debacles, affecting every aspect of our society. Not only do judges make policy, they often do so when they shouldn't, and they sometimes make terrible policy. We desperately need more, not less, debate about judicial activism. As stated by conservative Michigan Supreme Court Justice Robert Young, the "survivor" of trial lawyer-funded opposition in his hard-fought 2000 re-election campaign, the health of our republic — and our judiciary — "is sustained whenever the public is treated to a robust discussion of the issues, no matter how unseemly it may appear to elites who purport to be concerned about protecting the public from its own naiveté." Young believes that informed voters, even if on the basis of 30-second campaign ads, understand the issues and what is at stake, including "the difference that judicial philosophy makes." No wonder incumbent judges want to muzzle their critics, especially at election time.

Tammany II

Not surprisingly, readers have brought to my attention additional examples of cozy deals between Governor Gray Davis and his mega-donors. My last column ("The New Tammany Hall" *CPR,* July/August), it turns out, barely scratched the surface. Here's one: Beverly Hills grocery store tycoon Ron Burkle (the Ralphs and Food 4 Less supermarket chains) has donated more than $600,000 to Davis (among many other Democrat pols) since 1998. Burkle is the ultimate Democrat "Sugar Daddy." His investment firm, the Yucaipa Companies, recently hired Bill Clinton — not generally known for his financial acumen — as a "senior advisor" at an undisclosed salary, and previously employed partisan hack John Garamendi when he was between campaigns. The California Public Employees' Retirement System (CalPERS), the nation's largest pension fund, decided earlier this year to invest up to $760 million of its assets in private-equity funds managed by Burkle's firm. A CalPERS press release acknowledged that the arrangement with Burkle's firm, which will seek to tap the assets of union-run pension plans, is unprecedented. As governor, Davis appoints two of CalPERS's 13 Board members. CalPERS Board members include Willie Brown (appointed by Davis), state Treasurer Phil Angelides, and state Controller Kathleen Connell, all of whom have received contributions from Burkle or his firm, and all of whom serve on the Investment Committee. The management fees Burkle will receive on three-quarters of a billion dollars have not been publicly divulged, but will likely be in the millions of dollars annually. CPR

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SMALL BUSINESS TSUNAMI

The Limits of Liberal Compassion

WHY THE 'FRIDAY FUN FACTOR' IS SLIPPING AWAY

BY ROBERT L. GIOVATI

CALIFORNIA SMALL business owners are in trouble, and over-regulation is the primary reason. Industry advocates monitoring the Capitol this year have had little cheer about. What some call an anti-commerce legislative *tsunami* has swept through Sacramento, leaving many entrepreneurs feeling like castaways. They cling to whatever financial dry ground they can find, and fear watching their profitability and sense of purpose wash away in the churning legislative current.

I encounter this sentiment first-hand almost every day. Our corporation specializes in industry-specific benefits (brokering health and workers compensation insurance, credit card processing, and similar services) for the automotive "aftermarket" — those businesses that provide parts or service for your car after you buy it. That's roughly 40,000 companies in the Golden State or about 5 percent of the California economy — a sizable chunk. In regular talks with these automotive professionals, I hear one consistent message: the biggest obstacle they face is government intervention in their business.

No, the state's economy is not about to collapse, and some companies are doing quite well. But many others — neither clear winners nor losers — are mired in an eternal middle: doing reasonably well by most objective standards, but having difficulty reaching full sail, in profitability or in sustaining their owners' passion for what they are doing. Why? A legislative tide in California that is pulling them down.

We see it all the time. Hard-working small business owners toiling away on long shifts, with few days off and little discretionary income. Every time they turn around, a cash-depleting new tax or regulation is there to greet them, courtesy of the government. Profitability shrinks. Inspiration ebbs. Plans to expand the company are put on hold indefinitely, or discarded altogether. It's not uncommon for these business owners to run afoul of some obscure rule or code they don't even know exists — until they learn of it in a written notice of violation, complete with fine. The overall situation creates a sense of swimming upstream, of exerting more effort for less pay. These people don't want, and, in fact, often vehemently resent, any assistance from Sacramento. They are more than willing to rise and fall on their own abilities as merchants. Frankly, for the most part, they just want to be left alone.

The element most difficult to measure in this discussion of business conditions is intangible, but vitally important: what I call the "Friday fun factor." (Coincidentally, a similar phrase turned up in an article I read by another author after I finished this piece, the author giving it a meaning different from mine.) You probably won't find it referenced in any college course or textbook, but I assure you it is real. In countless conversations my associates and I have had with business professionals, one thing seems abundantly evident: a

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majority no longer enjoy their work as much as they did in the past. Now, do we somehow owe business owners the "right" to "fun"? Certainly not. But do *they* have a right to enjoy the rewards they themselves produce through their own hard work? They certainly do, and the rest of us just as certainly have *no* right to take those rewards from them, employing state bureaucrats and politicians to do it; yet that is exactly what is happening.

I DON'T HAVE pie graphs, flip charts, or a slick statistical analysis to back up my contention that owning a business in California is less gratifying than it once was. It comes from the approximately quarter-million miles I've driven throughout California over the last decade, visiting business owners and discussing what's important to them. Most of my colleagues have similar tales of windshield time, and poignant chats with shopkeepers fed up with government constantly telling them how to run their establishments. I wish some among our current crop of legislators in Sacramento could have been with me on a few of those marketing jaunts. Well, not really — but they still might have learned something.

Listen to a conversation with most Sacramento lawmakers on this topic, and you will probably hear some variation on: "Senator, the cost of complying with the regulations contained in this bill, added to the heavy burden of taxes, fees, and regulation these businesses are struggling to carry now will devastate my industry." "You know, we hear that all day around here. But I look out over this big, beautiful, bountiful state we all love so much, and I see thousands of thriving businesses. We are talking about [insert noble cause *du jour* here]. Business is not going to collapse if it is asked to bear its fair share for the good of the state and its people." Former Senator George McGovern, a consistent, programmatic liberal through all his years in Washington, went to New England after retiring from politics and tried to run a business, an inn of some kind I believe. The enterprise failed, for which he blamed government's tangle of impossible and contradictory (to the point of senselessness) regulations and taxes that finally strangled his dream. He concluded, rather pathetically, saying: "I wish that someone had told me about the problems of running a business. I would have to pay taxes, meet a payroll — I wish I had a better sense of what it took to do that when I was in Washington." His candor did him credit.

The truth is, most liberals reserve their "compassion" for their political friends. They congratulate themselves for doing good with other peoples' money and hard work. Industry is seen as a virtually evergreen source of funding for wealth redistribution programs rewarding those who keep liberals in power.

In Sacramento, business owners are told it's in their best interest to pay higher wages and taxes, because it will make for happier, more productive employees and, thus, higher revenues. Good fortune is apparently only a new tax or employee spiff away. Things are deemed "fair" only when people without your skills, willingness to take a risk, or work ethic make as much as you do. So, if you're a business owner who isn't readily doling out benefits galore to your personnel, and gleefully acquiescing to every additional fee imposed upon you, the ruling class sees you as part of the "problem." Giving away more of your income will make you better; just wait and see. This cockeyed perspective drives much left-wing legislation intended to level California's economic playing field.

But we upset, rather than restore, economic equilibrium when we unfairly take from one group to give to another. And rather than acknowledge the predictable failure of these programs as evidence government should back off and let the free market work, dismal results are viewed as proof that yet more of your dollars should be diverted to such schemes. Here's a thought: let the people who actually earn the money spend it, and the economy will be buoyed all the way down the line. No such luck in California.

AND SO I return to that nebulous yet all too genuine component I call the "Friday fun factor." Is it as enjoyable overall to own a business in the Golden State today as it was, say, five years ago? Fun creates incentive, incentive creates success, and success gives a business owner a great reason to get up each morning to do it all over again.

Small business is an absolutely key element in our state's economy. Everyone's well-being is endangered when many dedicated businessmen contemplate abandoning the ship. They aren't looking for government help or our pity, but they don't want government working against them either. The answer isn't some new piece of legislation, but the absence of detrimental legislation: an end to laws tying anchors around their necks. Small business success means jobs and spending and tax paying that benefit all Californians. The entrepreneurial spirit is resilient, but not indestructible. It won't survive an endless barrage of feel-good legislation — such as this year's legislative *tsunami* — hamstringing commerce and making people wonder why they ever started their companies in the first place. That isn't fair, and it's no fun at all for any of us. CPR

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PLANNED CRISIS

CALIFORNIA'S CONTINUING ENERGY DEBACLE

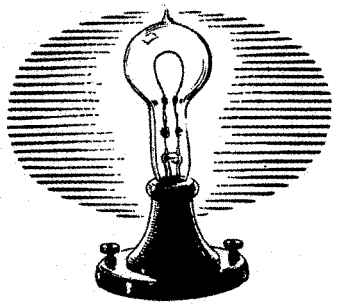
by Cathy Horiuchi, D.P.A.

Dr. Horiuchi is an independent researcher whose recent dissertation on system reliability received the University of Southern California Reining Award. She teaches Administrative Research and Theory for USC and is a member of Bill Simon's Task Force on Powering the Future.

California's partial restructuring of electricity markets began on a high note, promising reduced costs from competition and innovation. The markets designed following passage of 1996's Assembly Bill 1890 worked well early on, but delivered high prices through summer and fall, 2000. How did the state respond? Did the response reflect a belief in the value of markets, or favor a command-and-control approach? Have the choices made worked well for California? How might things have turned out had the state taken a different course?

Choices

State officials — including Governor Gray Davis, California Power Authority Chairman (and former general manager at Los Angeles Department of Water and Power) S. David Freeman, and Attorney General Bill Lockyer — have repeatedly said the state had "no choice" but to enter the market to buy electricity in response to energy market disruptions. The state acted to increase electric power supply, to apply price controls where it could, and to urge price controls where it could not apply them itself. When high wholesale prices and frozen retail rates resulted in the state's two largest utilities running out of money to buy bulk power in January 2001, the state took over buying power itself. Not only were market dysfunctions never alleviated, the state exacerbated them.



So, through all this, *did* the state have "no choice" but to follow the course it did? Four points argue against it:

First, notwithstanding frequent citations of inadequate electric power-generating capacity as the cause of rising prices and rolling blackouts, the 1990s saw *no* great increase in peak use, and prices in the summer of 1999 were well below historic averages.

Second, the state's three investor-owned utilities had sold their non-nuclear utility generation by 1998, two years *before* the shortages and high prices. Blaming price spikes on the sale of generation to potential "gougers" is, thus, not borne out.

Third, for two years under AB 1890, the state's ISO (Independent System Operator — the state-created entity established to insure that electric power was reliably available) operated according to design, purchasing little power and experiencing few shortages. In the summer of 2000, under intense political pressure, the board lowered the cap on the price it would pay for power from $250 to $100 per megawatt hour. Like any price control, this one helped create shortages and artificial dislocations throughout the market.

The irony of it all

California leaders employed these sorts of politically popular remedies without apparent regard for the distortions they would create or aggravate for electric power production, distribution, or consumption. The irony of it all is that while privately-owned utilities were going bankrupt through over-regulation, government-owned utilities such as the Los Angeles Department of Water and Power (LADWP) were operating like businesses and, thus, avoiding the energy "crisis" entirely. This contrast, more than anything, shows that the shortages resulted not from lack of power generating capacity, but from state-imposed restraints selectively imposed on private, but not on "public," utilities.

Fourth, unlike Texas, California is not an energy island. The western United States is an interconnected electric energy market, benefiting California in many ways. For example, LADWP holds

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long-term rights to hydroelectric power from Nevada's Hoover Dam and to inexpensive coal-fired power from the Four Corners area. Western grid summer and winter capacity estimates available in 1999 and early 2000 indicated the supply for 2000 would be adequate: far above the 7 percent margin used by the ISO to trigger a system emergency.

Despite evidence that California had adequate if not abundant generation available, when the early signs of market manipulation appeared, the state seemed little interested in fixing the market, and more interested in controlling the generation, transmission, and distribution of electricity in California.

Control

The truth is, starkly differing alternative responses to unintended market behavior were open to California's leaders. These alternatives existed in 2000 and could be implemented even today. They were discussed in newspapers, within the California ISO, and at the California Energy Commission, not to mention academic and other, more esoteric settings (*see* comparisons, below).

State leaders adopted a command-and-control model of rules and regulations for the crisis, a course that suggests an underlying distrust of market economies and an ideological commitment to central planning. To define my terms: in a centrally-planned economy, the state has authority to decide who produces what, how resources are allocated, and at what price products are sold. The goal is to make the economy more equitable, but the result is often increased waste and inefficiency. (*See:* R.C. Epping, *A Beginner's Guide to the World Economy*, 3rd ed., New York, 2001.)

In 2001, the state made many unilateral decisions about the production, transportation, and distribution of electricity to residential users and businesses. These included rolling back retail electricity rates for residential users in San Diego, blocking the sale of remaining generation assets by investor-owned utilities, originally blocking the purchase of generation via bilateral contracts, and setting the price utilities had to pay in support of consumer conservation programs.

As for "increased waste and inefficiency": the state negotiated contracts in secret that overpaid and overpurchased electricity. The state will pay for the full cost of new construction over a short period, while receiving only the first few years of production in return.

Are we better off?

If the state had chosen a strategy to repair the market, residential and business users might well have experienced far less disruption of electric service pricing and availability. Instead, Californians have lost the chance to foster competition through customer choice of energy suppliers (called direct access). Concerned about protecting its long-term revenue stream to cover state bond purchases in 2001 and the costs of state energy purchases, state leaders killed direct access as a provision of AB 1-X, passed during the Legislature's 2001 Special Session to deal with the energy crisis.

Third, environmental concerns receive little attention in the new, expedited plant-siting process.

Finally, the state now appears to be untrustworthy and obstructionist to neighboring states, the federal government, and especially to private owners of electrical power. In April 2001, Senate President Pro Tem John Burton suggested the state seize power plants in order to "terrorize the bastards" who had bought them from the utilities as part of the implementation of AB 1890. In March 2002, Davis said "Deregulation was a total scam to rip off consumers." Unsurprisingly, this political environment has devastated private capital's interest in building up California's generation and transmission systems. Where else can California go to fund these systems? To taxpayers and ratepayers — a sour note in a time of historic deficits. CPR

What *could* have been done	What the state *chose* to do
• Change the market rules to eliminate legal gaming and potential for market power.	• Waited until the market and utilities went broke, then stepped in as sole buyer.
• Allow retail prices to rise with wholesale.	• Left rate freeze in place, reintroduced retail rate freeze in San Diego.
• Allow utilities to sign bilateral contracts with guarantee that the prices would be accepted by the Public Utilities Commission (PUC).	• Lifted ban on bilateral contracts, but reserved right to reject price at some future point.

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The Quiet Re-emergence of California

Retail Politics

(ré-tāl pol′e-tiks) *n.* 1. direct contact with voters.

By RAY HAYNES

California Senate
Republican Whip

Power to the People: *Key GOP players will have to outgrow the habit of looking no further than a candidate's fund raising ability, the 'consultant' he hires, and how 'winnable' his district may currently be.*

California Democrats, operating mainly through labor unions, have, through several recent elections cycles, organized and deployed an impressively effective political "ground game" for registering voters, recruiting and identifying supporters of their candidates, and making sure those supporters vote. They thus have invaded what was once virtually a Republican preserve. What's more, also now for several recent elections cycles, the GOP ground game has diminished. These opposing trends help explain part of why Democrats have come to dominate California. But now signs have appeared indicating that state Republicans — some of them, anyway — are becoming aware of the handicap they have imposed upon themselves in their competition with Democrats and are addressing the imbalance by revitalizing so-called "retail politics" — direct contact with and active recruitment of ordinary Californians to help them win elections up and down the state. Bill Simon's gubernatorial campaign, for instance — reportedly at the urging of the White House — recently added John Peschong as a full-time campaign manager, relieving Ron Rogers, who had been serving as both campaign consultant and campaign manager, of that duty. (Rogers continues as consultant.)

The move, at first glance, may seem a small matter, but it could turn out to be decisive. The White House was said by close observers of the campaign to be concerned that nearly 90 percent of the Simon for Governor budget had been earmarked for broadcast advertising, with the rest devoted to "overhead" — obviously leaving retail politicking out of the picture. The move is potentially significant not with regard to Mr. Rogers or Mr. Peschong, both of whom are highly talented, hard-

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working, veteran political professionals. Its significance, rather, has to do with campaign structure and, through that, with moving toward the more balanced campaign that Simon will need to win. Peschong is known to be a strong believer in the political ground game. More importantly, the addition of a full-time campaign manager independent of the campaign's consultant apparatus should help diminish a built-in conflict of interest that has hobbled many a GOP election effort. A little background will help explain how Republicans have created barriers to more balance in their campaigns — and how Democrats have avoided these pitfalls.

DEMOCRATS' POLITICAL DOMINANCE

Consultants are essential to most modern campaigns, especially in statewide races in a huge state like California where the only effective way to reach millions of voters is through television, primarily by means of paid TV spots. Consequently, both major Parties rely heavily upon TV and upon professional consultants one of whose primary jobs is to create powerful spots and effective media strategies to bear the campaign's message to those millions of voters. But, of course, there is much more than that to winning campaigns and, even more so, to achieving what ought to be any serious Party's ultimate goal: setting the state's overall political direction for a long period of time. That can only be achieved by overall political dominance in the state.

It is just that sort of electoral dominance that Democrats have achieved in California, for good reason. They have a complete strategy for achieving electoral success. It is a good blend of the short-term and the long-term. Their interest groups understand the importance of (1) minimizing internal conflicts; (2) maximizing their collective interests by working together; (3) dividing their opposition the better to conquer them; (4) getting the support of their opposition at key points in the political process; (5) sublimating short-term political gain for long-term political dominance; and (6) taking their battle to the streets, with the right amount of money and people to maintain their power.

California Democrats' success has little to do with any practical wisdom or wide popularity attaching to their ideas. The concepts of intrusive, bureaucratic government, high and eternally-rising taxes, and the politics of self-indulgence (their response to cultural issues) has failed consistently everywhere it has been introduced. Ultimately, a society that caters to its baser instincts welcomes cultural disorder, which leads to political tyranny, and, finally, to economic and cultural devastation. The last three years of complete political dominance by the left in California have provided stunning examples supporting this point, most dramatically in their transformation of a $12 billion surplus into a $23.6 billion deficit in two short years.

Yet, despite the poverty of their ideas, the most amazing part of Democrats' near-complete political dominance is not that they win elections in California. Given their overwhelming advantage in resources, they *should* win elections. The wonder is that Republicans are "in the game" politically at all. That they *are* is testimony to the strength of Republican ideas. If the GOP ever figures out how to move those ideas into the state's neighborhoods, the game may be just about up. But that would require a political strategy more than just: spend lots of money in the last six weeks of a campaign and pray people vote for the Grand Old Party. Republicans will have to take California street by street, neighborhood by neighborhood, town by town, and county by county. That cannot be done with money alone (as Gray Davis may soon discover).

CONSULTANTITIS, AND DERIVATIVE MALADIES

How have GOP campaigns become so out of balance, neglecting long-term political strategy and the crucial "retail politics" aspects of both strategy and tactics? The answer has many parts, but the biggest problem is that the Republican political class in California has placed too great an emphasis on political consultants. I'm not attacking those consultants. Many are hardworking, good people just trying to figure out how to stay afloat from election to election. Democrats, holding legislative majorities in both houses, are able, between elections, to hire their consultants, either as lobbyists or policy staffers. Wander

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around the Capitol in the off-year and you will see them everywhere, earning $80,000 to $120,000 a year off of taxpayers, waiting for the next election. Election year consulting fees are gravy to the Democrat consultants, making them rich over the long-term, while taxpayers keep food on their tables.

Republican consultants don't have that luxury. They have to pay for two years worth of food and mortgage payments in the six weeks before primary and general elections. Any other money they make in the off-year period is often dependent on how imaginative they can be drumming up business doing political commentary and analysis or, perhaps, an initiative or two to bring in a dollar here and there to live on until the next primary.

Election-year fees are gravy to Democrat consultants, making them rich over the long-term, while taxpayers keep food on their tables. GOP consultants don't have that luxury.

The result? When an election *does* come around, every strategy the Republican consultant devises for the mostly naïve candidate is, understandably, heavily influenced by the necessity of making sure the consultant receives his 15 percent commission. That's how the bills are paid. If the candidate can't raise the $200,000 or $300,000 or $500,000 to spend that will generate a healthy commission, that candidate is not worth the consultant's time. And, a candidate without a consultant, these days, is seen by the Republican "establishment" as "lacking credibility." This leaves otherwise good candidates who have difficulty raising money, and especially candidates in hard-to-win districts, in the cold.

I know one candidate whose consultant actually told him that, because he could not raise money at the rate the consultant desired, the consultant would drop him — in the middle of the campaign. The consultant thought there was more money to be made representing possible "independent expenditure" committees that might come in on behalf of the candidate than by representing the candidate directly, and didn't want to lose that money. Stories abound of wealthy candidates receiving Sacramento consultants' top-notch attention to the exclusion of better candidates, because the consultant knows he will get paid. It is widely believed that these accounts are often "churned," that is: the candidate is milked for all he's worth to pay off the consultant's new house or boat or ... name the toy. And, too often with little or no checking below the surface, Republican leaders who make critical decisions regarding campaign money, leadership, and candidates place great emphasis on signing up with "the right consultant" as the measure of a winning campaign.

Of course, GOP candidates in hard-to-win districts get no help at all from anybody. In competitive districts, at least some Republican message hits some homes in an election year. In strong Democrat districts, voters are lucky if they see a 30-second commercial for some statewide GOP candidate. The local candidates are without resources, without backup, without message — without any help at all. They end up despondent, discouraged, and ultimately alienated from the Party, wondering why they even bothered. Any "outreach" into a non-traditional Republican area begins by facing the strewn bodies of former Republican candidates who can rightly say the "Party" cared nothing for them. They ask, understandably, why anyone should take seriously its sudden claim to "care" about the community.

A particularly virulent strain of Consultantitus has appeared in the last several years of state GOP internal battles. Fights erupt over who gets what contract — often disguised as fights over political principles. The battles are orchestrated from inside the offices of various consultants, each figuring out how their candidate can win so they can get the Party's cash. Ideas are not the issue. Principles are not at stake. Party activists on all sides are energized, put to battle with each other, and kept in the war so that those at the top of the food chain can continue to feast on the lavish cash available to whoever runs the registration drives, or candidates' campaigns. All the while, the real battle — for the hearts and minds of ordinary Californians — languishes.

POLITICAL MEANING AND LIFE

The unbalancing influence of the GOP consultant/money structure can also be seen in well-funded cam-

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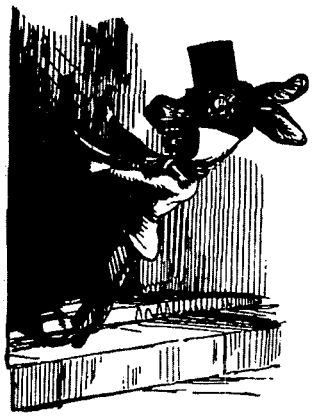
paigns. To put it bluntly: campaign activities that earn no commission aren't worth the consultant's time. And consultants don't get paid for work performed by grass roots activists on behalf of a candidate. Grass roots activist volunteers, by definition, work for free. People who work for political candidates for nothing do so because of what the candidate believes. Nobody has ever worked for me without pay because they loved me so much they thought I should earn $100,000 a year and get to call myself "Senator." They volunteered because they believed what I believed, and they thought I would work to implement those beliefs in politics.

These activists give politics meaning and life. They take their ideas and energy into their neighborhoods, into their Rotary or Lions clubs, into their children's soccer team, into their church social. When they sit around the table Saturday night with friends, they tell them why they like what I stand for. I could not buy that type of affirmation with a million dollars, and my opponent could not discredit me against that kind of support with her million. The flesh and blood these activists add to my skeleton campaign give it a life no consultant could ever create.

Now, before people will trust a politician with power, by volunteering or even voting for him, they have to believe the politician is committed — sincerely, or at least reliably, not just for short-term political convenience — to their ideas, to their issues. But when political activity is consultant commission-driven, issues tend to become the means to the end of enriching the consultant, not the end themselves. Supposedly "principled" stands on issues are taken cynically, as matters of campaign expedience to be cast aside once the electoral battle is over. Later, for the next campaign, they are resurrected. Somehow, practitioners of this particularly thread-bare chicanery contrive to be "shocked" — often seeming to be genuinely surprised — when voters, finally fed up with the charade, show little interest, much less faith, in the supposedly "standard-bearing" candidate.



Issues are not convenient tools to help with the short-term acquisition of power; they are the necessary building blocks of long-term political dominance. Activists convinced of a politician's commitment will work, if they are asked, and, more importantly, they will become missionaries for the larger cause. They will become the army for the ideas that will help their political leaders and movement achieve political dominance. They will take the state neighborhood by neighborhood, street by street, town by town, county by county.

THE DEMOCRAT ARMY

The Democrats understand all this. They have an army. They have their missionaries. In every community, in every city, in every county, some paid union staff member, some environmental activist, some animal rights nut, some public employee takes the Democrat message into the community centers, the churches, the social clubs, and the little league games every day of the year. Whatever their issue, they understand that the Democrats will do what they can to promote it, as long as they promote the Democrats. As a result, their army is fully deployed year-'round, throughout the state, with just enough money to keep the engine running full time. Political consultants are just a small part of this overall operation. At the root of Democrat power is this political army that can be deployed any time, not just at elections, an army energized by ideas Democrats propose to implement.

Counteracting this army requires a similar recruitment strategy for Republicans. But consultants cannot reasonably be expected to draw it up and implement it. They have no incentive to recruit and train a GOP army; but others — those who benefit from effective political action — have ample incentive to see it done: candidates, movement leaders, issue organizations, donors, and campaign managers whose livelihoods depend on winning elections and increasing their Party's political power more than on the size of vendor contracts. Consultants have their own critically important jobs to do and can't be expected to perform the army-building task in the midst of an intense campaign, or even in the off-election years. Donors and other key GOP players will have to outgrow the habit of looking no further than a candidate's fundraising ability, the "consultant" he hires, and how "winnable" his district may currently be. They will have to begin looking closely at how well a candidacy serves the Party's long-term goal — dominance in the state: Does it enhance GOP standing within critical constituencies? Does it sow divi-

(Please turn to page 31)

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The End of (California) History?

Don't be too quick to label the Golden State 'liberal.'

by John Kurzweil

Is California liberal? Plenty of people argue that it is, usually along with a pair of corollaries: 1) that conservatives can win neither statewide nor, for the most part, lower-level elections, and 2) that realism dictates accepting the situation and moving on. This election year, the argument takes a specific form: that Republicans have shot themselves in the foot once more, nominating for governor Bill Simon, whose campaign, not to put too fine a point on it, is a waste of time. Pro-life? Pro-gun? He might as well spend the summer and fall on the Moon for all the good his hopeless efforts will do him in California. *The Christian Science Monitor* stated the argument straight from the formulary June 13: "In the land of Reagan," the head and sub-head ran, "GOP faces prospect of a shutout: Polls and even Republicans themselves say Democrats look poised to sweep California's top offices in November." *Monitor* staff writer Daniel B. Wood expanded on the theme:

> Reflecting a steady demographic shift in race, ethnicity, and income, the state that created the prototypical Republican enclave, Orange County, and launched the country's most-popular conservative, Ronald Reagan, is tilting more and more Democratic. With the governor's office, both legislative houses, both Senate seats, and most big-city mayors solidly Democratic, some see even bigger gains ahead and wonder if voters may ever look back.
>
> "I don't think this is a blip on the screen," says Larry Berg, founder of the Jesse Unruh Institute of Politics. He and others recount the rise of Asian and Latino middle classes, the decline of the industrial base of defense-aerospace after the

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> cold war, and the ascendancy of high-tech and entertainment-based wealth are all combining to produce a new kind of voter base with decidedly liberal loyalties. "The makeup of the state just isn't what it used to be," says Mr. Berg.

Lots of nearly identical examples could be produced; readers have no doubt seen many themselves. The tone is consistently one of objective analysis, not partisan polemics, as though guided by no more than dispassionate truth-seeking and the spirit of friendly advice to Republicans not yet convinced. But I contend, on the contrary, that the argument is altogether polemical, intended to dodge critical analysis both of liberal ideas and of the voters' mood. It substitutes a self-serving "inevitability" about liberal triumph that, if accepted, leaves opposition to it, or even criticism of it, futile — *i.e.*, Simon is wasting his time.

My dictionary defines "objective" as: "*adj.* 1. Of or having to do with a material object as distinguished from a mental concept, idea, or belief. 2. Having actual existence. 3.a. Uninfluenced by emotion or personal prejudice. b. Based on observable phenomena." I suppose most people, asking themselves whether or not California is "liberal," would begin by thinking about positions usually thought of as liberal on political issues — taxes, spending, abortion, the environment, race preferences, whatever. Such positions, I would say, qualify as "actually existing" "observable phenomena." But the *Monitor*, following standard practice in these matters, contrives a definition of "liberal" not based on issues, but on election results, and on a highly selective set of election results at that.

Ronald Reagan's repeated landslides are dismissed. They came, we are told, before demographic shifts that have produced "a new kind of voter base with decidedly liberal loyalties." I will consider these new demographics shortly. Here, I merely comment (a) that if a young Ronald Reagan were running today for his first elective office as he did in 1966, he would certainly blow Gray Davis out of the water even more decisively than he did Pat Brown — anyone who seriously doubts that is welcome to do so — and (b) that if California's population and economic base today matched that of 1966 in every particular, we would still be told with not one iota less certitude that California is too liberal to elect a conservative (although the supporting arguments would be modified).

In fact, of course, universal conventional wisdom in 1966, and, for that matter, in 1976 and 1980 when he ran for president, was that Reagan could *not* be elected. One day a few weeks before the '76 GOP primary in Indiana, where I was working in a *very* minor capacity for the Reagan effort, I happened to find myself on an airplane across the aisle from a pair of Jimmy Carter campaign staffers. We all were wearing our campaign buttons, and you would have thought I was their long, lost wealthy uncle come home to dole out the fortune. They were all over me. These political pros considered the whole Reagan campaign as nothing less than an unofficial arm of the Carter effort. If we Reaganites could just find a way to take the nomination from Gerald Ford, November would be a formality. Reagan *winning* never crossed their minds. And so it always is: with Pat Brown "helping" Reagan win the '66 GOP primary over San Francisco Mayor George Christopher and Gray Davis "helping" Bill Simon topple LA Mayor Dick Riordan. As the *San Diego Union-Tribune* put it recently: "While Davis was wary of going against Riordan in November, he salivated at the prospect of facing Simon." The supporting rationales come and go, but the certitude never wavers.

And it is evident in post-election analyses, where a simple rule prevails: if a liberal wins or a conservative loses, the people are voting on issues, showing their liberal leanings; if a liberal loses or a conservative wins, some extraneous element not related to issues dominated. Thus, Tom Campbell was a "quirky" candidate who turned voters off personally after his 20-point loss in 2000 to Dianne Feinstein, but Dan Lungren did not lose for being quirky — *his* 20-point loss to Gray Davis in '98 was a solid voter

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repudiation of his conservative, particularly his pro-life, ideas. Analyses of Pete Wilson's gubernatorial wins stressed his being pro-abortion, quietly ignoring the voters' rejection of his Democrat opponents' far more liberal positions on most issues. And, of course, Reagan himself won because of his charm, not his ideas.

This post-election double-standard is only a part of the larger over-simplifying distortion that argues the state is "liberal" because Democrats win. The double-standard and the "liberal" labeling both ignore boatloads of inconvenient facts. After all, a massive event like the 1998 campaign that resulted in Gray Davis's election involved the spending of tens of millions of dollars in both Parties' primary and general election campaigns; countless decisions by hundreds of political professionals as to strategy, tactics, and campaign finance; thousands of messages sent out by the campaigns to voters over TV, radio, direct mail, and other means; tens of thousands of print and broadcast news stories, editorial commentaries, letters-to-the-editor, and talk show call-ins; an endless series of news releases, speeches, and off-the-cuff remarks by candidates, press contacts, other staffers, and just plain others somehow associated with a campaign or the election in voters' minds; an infinite number of voter perceptions, ranging from passing to profound, about those running for office; and, finally, millions of individual voters with infinitely varying reasons — philosophical, emotional, altruistic, self-serving, whatever — for choosing which chad to push through their March and November ballots. The candidates, of course, are more than ideological place holders — full-blown human beings, as a matter of fact, with all the usual variations and complexities of personality, outward appearance, capacity for "connecting" with people, inner strength or weakness of character, and on and on, none of it necessarily having anything to do with their spot on the political spectrum, which itself is probably not fixed, but (as with most of us) moving this way and that as our lives unfold.

Beyond all of these dynamics, there is the much larger world of events, political and otherwise, out of anyone's — much less any campaign's — control, heavily influencing voters' moods, sense of important issues at any given moment, and decision whether or not to vote at all. To take all this, multiply it by hundreds of local, congressional, statewide, and presidential elections over the last decade or so and conclude that it means we now have a new, predominant "voter base with decidedly liberal loyalties" is useless as analysis, though it may make effective polemics.

No imaginable policy could more absolutely contradict everything liberal Democrat office holders believe than Prop. 22, yet it passed like the Scotch Express, flattening everything in its path.

And why be so round-about anyway? If you want to use election returns to learn something about voters' political philosophy, a much more straightforward reading is provided by ballot measures with clear, widely-perceived liberal or conservative implications. Consider the huge majorities piled up by the California Civil Rights Initiative (banning race and gender preferences), English for the Children (eliminating most public school bilingual education), and, especially, the Defense of Marriage Act (marriage as a union between a man and a woman). These certainly put a massive dent in the California-as-"liberal" notion. No imaginable policy could more absolutely contradict everything liberal Democrat office holders believe than Prop. 22, yet it passed like the Scotch Express, flattening everything in its path. If the *Monitor* ran an article at the time noticing a "new voter base with decidedly *non*-liberal loyalties," I missed it.

But not everyone has missed these in-

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dicators. In a March 2000, post-primary column, *Sacramento Bee* commentator Dan Walters, not known for any special affinity to Republican or conservative causes, noted the results for the three initiatives just mentioned as well as voter rejection of a measure to lower the requirement to pass local school bonds from two-thirds to a simple majority (a slightly different version of this measure passed later in 2000), passage of "several measures billed as tough on crime, most notably one that will make it easier to treat juvenile offenders as adults," and voter rejection of "two laws that would have made it easier to sue insurers for 'bad faith' handling of claims." Putting it all together, Walters dismissed the reigning orthodoxy, giving his own verdict on California's ideological position:

> California has a reputation, promulgated by those in the New York- and Washington-based political media, for being a wild and crazily liberal state .... However ingrained this image may be in the Eastern media, it's not supported by the hard voting data. This week, California's voters demonstrated once again that on the ideological scale, they continue to reside slightly right of center.

The trouble with all this election-returns-based ideological pigeon-holing of Californians is that lists of election returns could be produced to "prove" just about any conclusion. Californians elected Reagan governor twice, but they also elected Democrats Pat and Jerry Brown just before and after that, and then George Deukmejian, although, the first time, by the thinnest of margins. At that point, having voted Democrat or nearly Democrat in three straight elections, Californians kept Republicans in the governor's office for 16 years, whereupon they elected Gray Davis in a landslide. But the voters — even his own Democrat rank and file — now regard Davis with dismally low approval. The only diagnosis consistent with this series of ludicrous jigs and jags would perhaps be that the people are schizophrenic ... or, maybe, that they just don't fit into handy pigeon-holes.

In the 1942 film *Road to Morocco*, Bob Hope and Bing Crosby argue over whether they are being haunted by Bob's Aunt Lucy. "The dead have a way of coming back, you know," says Bob. "Go on," Bing answers, "when you're dead, you're dead." "Not Aunt Lucy," says Bob. "She was a Republican" — just showing that the idea that one or the other Party is washed up for good, like the poor, we have always with us. (Republicans, after three defeats by Franklin Roosevelt, were supposed to admit they were dead, and chided for refusing to do so.)

And the idea is usually wrong, though, of course, sometimes political parties *do* cease to exist: when they cease to represent either one or the other side in the nation's consistent, underlying political struggle *and* an alternative arises to represent the position not being served. America's Whigs disappeared when they proved incapable of representing effectively either side in the emerging issues that led to the Civil War. What's really silly about the "California is liberal" notion (with "some" wondering "if voters may ever look back" the *Monitor* says) is that it implies an end has been reached, in this huge political entity, to the battle between humanity's deepest competing political impulses — that it's all been settled: the End of History, as some idiot put it.

The actors and the momentary "issues" transmute from the '60s to the '80s to the new century, from Vietnam, Cold War, and Great Society to Supply Side economics and missile defense, on to National Health Insurance and a Social Security "Lock Box." But these are transitory elements, just as are "the rise of Asian and Latino middle classes" and "the decline of the industrial base of defense-aerospace after the cold war." They are one day's battle formations in a long-term war. Making a similar mistake, French defeatists saw Hitler's *blitzkrieg* as proving final Nazi victory "inevitable." They called resistance absurd and destructive, only prolonging the suffering as the old world gave way

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to the new — as if victory in any battle could somehow "settle" the eternal warfare between slavery and freedom. Even *had* Hitler won, and his empire hung on for a while, it would have changed nothing about the essential issues in the fight. And those issues survived the allied victory: the battle continued, as first Eastern Europe, then the world, learned. It *will* continue as long as there are people to fight it, through politics and war. "If men were angels ..." James Madison said. Alas, they are not.

One constant is the left's eternal migration ever further left. Taxes are never quite high enough; government programs and regulations never quite ubiquitous enough, spending never quite lavish enough; guns, boy scouts, Christian symbols, and traditional morality never quite marginalized enough; and education and the law never quite politically correct enough. This dynamic guarantees an endless supply of that supposedly extinct breed: Reagan Democrats. As former Democrat Reagan said, "I did not leave my Party; my Party left me," as it still leaves millions of voters unwilling to follow its everlasting migration.

Consider the demographic shifts urged as reasons for Republicans to move left. The *LA Times'* March 2000 exit poll showed Latinos as the ethnic group most strongly supporting the Defense of Marriage Act, 65 percent "yes" to 35 percent "no." Second? Blacks, the *Times* reported: 62 to 38 percent. Asians? Third, at 59 to 41 percent in favor. Fourth, and last, Whites, 58 to 42, which might explain Republican leaders' reluctance to champion the issue of family with Latinos — Hispanics are too conservative for them! Even Tony Quinn, a "strategist" usually heard urging the GOP to drop its conservative ideas, has noticed a serious Democrat vulnerability here. Last January, he wrote in the *Times:*

> ... [S]ometimes Democrats seem biased against, and often contemptuous of, positions of the Roman Catholic hierarchy. This development could provide an opening for Republicans, which could be especially important in California, where the church-going Catholic electorate is increasingly Asian — especially Filipinos and Vietnamese — and Latino.
>
> The Democrats' problem is the result of a clash between its old Catholic constituency and its newer members, especially feminists and gay-rights activists, in the context of the cultural divide that was so evident in the 2000 election. Bush ran far ahead of the usual GOP vote in rural America and with regular church attendees; he also won among married voters and women who stay at home with children.

Quinn mentioned Davis's "pro-abortion-rights litmus test for his judicial appointments that goes well beyond being just pro-choice" and that "the Democratic Party strongly opposed Proposition 22 ...." recalling, a little further along, that "Latinos supported it by margins 10 percent higher than any other group." Quinn also noted the Democrats' tradition of alienating one voting bloc after another over time:

> In the 1980s, Southern evangelical Christians moved away from their historic home in the Democratic Party; in recent elections, Italian and Irish Catholics seem to be doing the same thing. These national trends may not have reached California yet, but what if churchgoing Latinos and Asians begin to sense an anti-Catholic bias among California Democrats? The impact on California politics could be direct and immediate.
>
> Republicans, to be sure, will grasp at any straw in their comeback effort in California, and the Bush administration has zealously courted Latino voters throughout the country. Twice before, in the 1960s with Ronald Reagan and in the 1970s with Proposition 13, Republicans recovered when Democrats alienated their core constituencies. In the 1960s, it was working-class voters; in the 1970s, it was middle-income homeowners. Will Democrats give Republicans a third chance by alienating Catholics?

If Mr. Quinn is asking whether Senator Sheila Kuehl and the Democrats can be expected to

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"give Republicans" this chance by continuing their full-court press to nullify Proposition 22, and their broad effort to implement the "feminist and gay-rights activist" political agenda in California's schools and private institutions, the answer, plainly, is yes. They've given Republicans the chance already, and not just with regard to Latinos. A 2000 post-primary analysis of more than 20 GOP-targeted legislative districts showed that the "yes" vote for Prop. 22 *surpassed* the statewide 61 percent total in 18 of the districts. This analysis, prepared for a veteran GOP legislative campaign manager and shown to Republican leaders, detailed pro-22 voting patterns by Latino *and* blue collar-union households in those 18 (mostly working class, blue collar) districts. It showed that both these categories of traditionally *Democrat* voters favored 22 in higher percentages than the state had as a whole, offering Republicans a tremendous opportunity to make major inroads on this issue into key Democrat voting blocs.

Anecdotal evidence supported the data. Before the March primary (which was "open" — any voter could choose any candidate regardless of Party registration), a few enterprising GOP candidates, preparing for their regular precinct walks, tried an experiment. Leaving behind their carefully-calculated "high-propensity" voter lists, instead they simply approached any household showing a "Yes on 22" yard sign. (The campaign had invested in hundreds of thousands of yard signs statewide.) One candidate called the experiment the "most rewarding" day of his political life. At the first house he approached, he said to a black man mowing his lawn: "I am a candidate for the California Legislature and I wanted to introduce myself to you because I see you support Proposition 22. I do too." The man went into his house and returned with his wife and grown daughter. "Never in my life," he said, "have I voted for a Republican. But this issue is so important, we are all voting for you." All the candidates making the "experiment" brought back similar stories.

For all that, according to the campaign manager who gave his data to GOP leaders, the Party did nothing with it. Republicans lost seats in November. Opportunity, it seems, is not enough. Democrats, as Mr. Quinn suggests, may well "give" Republicans endless chances to attract alienated Democrats, but it will cost them nothing if Republicans ignore the opportunity.

Writing in the *Washington Times* last May, Hoover Institution research fellow — and former public affairs director for Governor Pete Wilson — Bill Whalen pointed out that, in California's 2000 general election, "women accounted for 53 percent of the vote compared to just 14 percent for Hispanics." He argued that attracting women voters is the critical GOP concern in California. While George W. Bush in 2000 and his father, in 1988, racked up similar numbers among Latino voters, Whalen wrote, "Bush the elder carried 48 percent of the women's vote (a one-point disadvantage) in 1988. In 2000, women, 58 percent to 37 percent, clobbered George W. Bush." H.W. carried the state by three points over Michael Dukakis while George W. lost California by 12 points. But now it appears Bush may have eliminated this "fem-gap." Mr. Whalen referred to a Spring 2002 Field Poll showing Bush "defeating Al Gore, 48 percent to 41 percent, in the Golden State, in a hypothetical match-up for 2004." In this poll, Bush was favored by a majority of California males (52 percent) and, more significantly in this context, by "a plurality of women (49 percent) ...." — a 2-point advantage over Gore.

So much for static analysis fretting about "liberal" California. Unfortunately, Mr. Whalen has trouble seeing the lesson of it all. Reverting to conventional wisdom, he advises Bush to maintain his strong numbers here by consulting "savvy California insiders like the strategist Tony Quinn [!], who maintains that the key to winning California is capturing a swing vote of independent voters whom he defines as an amalgam of Latinos, new economy techies, and upper-income women. According to Mr. Quinn, this bloc is fiscally conservative and socially progressive." Latinos, of course, are Democrats

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mainly because of that Party's championing of Big Government programs — hardly fiscal conservatism. As for attracting them to the Republican banner, Mr. Whalen, meet Mr. Quinn, who has interesting insights to share about Democrats alienating Catholics.

Both Bushes are pro-life, so it seems a bit of a stretch to conclude from all this analysis that the key to attracting women voters is to be "socially progressive," *i.e.:* pro-"choice." By the way, Bill Simon whose private polls show him also leading among women voters, is pro-life. The White House believes the key to the president's improved numbers among women is his education bill. Education is a major issue with a lot more women, frankly, than is abortion. Another indication that other concerns outweigh the life issue with many women: in early April, *CPR's* companion publication, *Capitol Watch*, reported that "a leading Democrat state Capitol consultant said his Party is 'underestimating how much people dislike Gray Davis.' He said Democrat pre-Primary polling showed the governor in deep trouble in his own Party, with 'no Democrat constituency group — African-Americans, labor, women, Hispanics, enviros — giving [Davis] an approval rating exceeding 50 percent.' He indicated Davis's tactic of criticizing Republican Bill Simon's pro-life and pro-gun positions do not overcome women's dislike of the Democrat governor." It seems that, for many voters, their broad impression of a candidate, positive or negative, outweighs the candidate's position on abortion. As strategist/pollster Arnold Steinberg wrote in *CPR* after the Lungren debacle, "Pro-choice voters say (in exit polls) abortion is the reason they vote against a Republican. But if they like a pro-life Republican, abortion is not an issue to them."

Bill Simon must project a clear, compelling image of himself and of why he is running, or the opposition will fill in the picture for him.

California's politics is fluid, not static. The state is nearly always "in play." A myth has taken hold, for instance, that "liberal" California was always out of George W. Bush's reach, which was why Gore could ignore the state. But in July 2000, the Steinberg survey showed W. within three points of Gore here, 37 to 40. With a better campaign, Bush could have won. Steinberg pointed out that a September 25, 2000, *Los Angeles Times* lead editorial — "Definite Choices on Schools" — all but endorsed Bush over Gore. It questioned the cost of Gore's "cradle-to-grave" program ("an astonishing $115 billion") while crediting Bush for his "tenure as an 'education governor'" with a "more real-world feel for education." It concluded that "Bush's leadership quotient in education is more impressive than that of Gore." Steinberg said the editorial gave Bush "quintessential third-party validation," and "should be enshrined, immediately, in paid issues advertising .... The Bush campaign needs to drop its beltway formulas and canned advertising and seize the moment ...." Had it done so, California women might have spared us all that excitement in Florida.

California political battles turn on ten thousand variables, few of which are under a campaign's control or even subject to its influence. Campaign focus has to be on factors it *can* influence — an obvious point, too often forgotten. Some basics to remember:

1) To thine own self be true (or: trying to be all things to all people is a loser). Following the 1998 election, veteran Democrat campaign operatives said long experience has taught them the one position on abortion that voters will not accept is "on the fence" — because they won't believe it. These Democrats implied Dan Lungren hurt himself by down-

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playing his pro-life position as a sort-of artifact of his Catholic upbringing, like wearing green, perhaps, on St. Patrick's Day. It sounded like political expedience, not conviction, talking. Lungren compounded this perception when he said he opposed the measure to end bilingual ed because it violated the principle of local control of schools. The issue became Lungren's trustworthiness. He seemed to be telling people what he thought they wanted to hear, not what he believed. Yet that is exactly what Republicans are advised to do by such "stop-fighting-the-new-reality" articles as that in *The Christian Science Monitor* or as written by Bill Whalen.

2) Polling is of real, but limited, value. Honest, competently-conducted tracking polls can help candidates take advantage of opportunities and avoid pitfalls in day-to-day campaigning. Just remember their limitations. Consider, for instance, all the certitude invested in the routine declaration that the voters are "pro-choice" on abortion.

It turns out to depend on how the question is asked. In 2000, a national *Los Angeles Times* poll found people inconsistent, to say the least, on the subject. 68 percent said no matter how they felt about it, abortion was ultimately a decision between a woman and her doctor. Okay, but what about the plurality — 46 percent — in the same poll who said abortion should be *illegal* except in cases of rape, incest, or to save the mother's life (which would ban all but a very few abortions)? And the 52 percent who oppose their own daughters having an abortion? And the *57 percent* who said it is "murder"? Plainly, a lot of people do not connect the dots, no matter how obvious they are. When they think of the "woman" (the pollsters being careful not to ask about the "mother") who wants an abortion, and are reminded of America's principle of personal freedom, *and*, perhaps, seeing themselves or their mate as potentially in such a circumstance, they favor "choice." But when they think of the child and are asked about "murder," they say that *that* is what abortion *is*. Adding it all up, about a third of those who say "leave it to the woman and doctor" *also* say most abortions should be illegal.

Another polling weakness leading to sharply diverging results is disagreement about "likely voters." Since the primary, Field has put Davis ahead, first by 14, then later, by 7 points. But a series of private *Democrat* polls and Simon in-house polls has had the race anywhere from a dead heat to Simon 8 points up. It turns out Field is much freer in defining "likely" voters than the other pollsters. Does anyone *know* what turn-out will be?

The lesson for wise candidates is to use polls to serve your larger ends, take what they tell you with due skepticism, and never listen to your opponent telling you this or that poll "proves" you should abandon your core positions. He is *not* trying to help you.

3) Good campaigns include an effective "ground game" as well as a clear, effective message. This point, beyond the scope of this article, is considered eloquently and in detail by Senator Ray Haynes in this issue of *CPR* — *See:* "The Quiet Re-emergence of California Retail Politics," page 19.

4) Less well-known candidates — obviously, for instance, Bill Simon — must project, through their campaigns, a clear, powerful, compelling image of themselves and of why they are running. Otherwise, the *opposition* will fill in the picture for them. November (1998) election exit polls, I am told, indicated that few voters knew GOP U.S. Senate candidate Matt Fong was, for instance, an Air Force Academy graduate. That information would have been a strong plus with many voters. To compound the problem, when the Boxer forces began pounding Fong late in the race on TV, Fong's people chose to ride it out, hoping his theretofore high poll ratings would last at least until election day. They did not.

Several political professionals I have spoken with say Simon's greatest vulnerability is that Davis will use his huge war chest for TV spots to fill-in the vague picture millions of voters still have of the Republican candidate in shades as dark as those applied to Matt Fong — unless Simon *first* fills in his own bright, clear picture. CPR

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Neumayr

(Continued from page 9)

turns out that members of this organization called "Good Counsel" also don't like abortion, and know other people who don't like abortion either.

Kurtzman reported that Good Counsel's web page "links to groups that espouse radical anti-abortion views" — as if Simon were the Webmaster. "Simon's opposition to abortion will almost certainly play a pivotal role in the fall campaign," she wrote innocently. Hmmm. Might this, Miss Kurtzman, have something to do with your pro-abortion reporting? Liberal reporters love to play the innocent bystander to problems they create. Bill Simon is not preoccupied with the abortion issue; but the reporters covering him certainly are. Has it occurred to them that they are more out of touch with Californians on this issue than the Republican candidate?

Kurtzman's big scoop that Simon "has ties to foes of abortion" — will she, in the interest of fairness, now report that Davis has ties to abortionists? — was about as newsworthy as the *San Francisco Chronicle's* June story that Simon talked to religious Republicans during the primary campaign. *Chronicle* reporters Lance Williams and Carla Marinucci reported that Simon "wooed voters of the state's religious right."

How extraordinary. How did they ever find out? Well, he once did an interview on the Trinity Broadcast Network in Orange County: "Videotapes of Simon's appearance — which went uncovered by the news media during the primary election — and other TBN broadcasts were obtained by the *Chronicle* and KTVU Channel 2."

Wow, what a coup. Did Simon say anything over-the-top in the interview? Nope, but that's not the issue. The issue is that he associated with people *Chronicle* reporters find extreme. And to prove it, they quote a TBN critic, Hank Hanegraaf, saying that the network is on the "lunatic fringe."

This, of course, wasn't the first Simon-is-a-creature-of-the-Christian-Right story in the *Chronicle.* It had tried to smear Simon through a smear of deputy political director Steve Frank a few months earlier. Back then, it had fretted over the possibility that Simon's hiring of a pro-life Reaganite like Steve Frank could cause a "rift" in the GOP. Had Frank been causing a "rift" in the GOP? No, but the *Chronicle* hoped to cause one for him through its reporting. But the *Chronicle* forgot to report one salient fact about Frank: He is Jewish. This was known to the *Chronicle,* but not reported, lest the smear lose its sting. CPR

Haynes

(Continued from page 22)

sion in the opposition's ranks, divert its resources, and otherwise undermine its political strength? Does it create a trained volunteer base available to help statewide races and local candidates? Does it add to the Party's bench of experienced candidates available for later races? Does it expand the Party's ability to reach more people, communities, and critical voting blocs? The state GOP used to (and may still) distribute a small card with inspirational messages on it, one of them listing the long series of failed candidacies that began Party founder Abraham Lincoln's political career. Had Lincoln thought along modern, Golden State GOP lines, he might never have left his Illinois law office.

BALANCED POLITICS

But, if Democrat dominance is to be challenged seriously, all these points must become critical parts of GOP leaders' and donors' candidate evaluations. Winning Californians' hearts and minds requires, first of all, candidates that believe in the *peoples'* causes and the *peoples'* futures even more than in their own ambitions and their consultants' mortgage payments.

Some groups are starting to see the wisdom of a more balanced approach to politics. Americans for Tax Reform, with the help of Sam Hardage in San Diego, and his field man, Ron Nehring, are developing a movement of trained operatives. The National Rifle Association is holding training seminars for volunteers. These volunteer activists are looking for good candidates, and, if last March's primary is any indicator, these candidates are beginning to emerge. As a result, Simon's chances for victory, and victory for several "down ticket" Republicans, are improving, the political pundits' analyses notwithstanding. But this re-emergence of a trained GOP volunteer force is only beginning. Long-term goals, by definition, take time and lots of work to achieve. The work has begun. This new decade will tell whether it is supported by the patience and broad view that ultimate victory requires.

That victory will often require consultants. It will also require money, the gasoline that makes the political engine go. But the engine of politics is the volunteer. Ideas are his air. Put the three together, keep them together over time, and the Republican Party will find itself setting California's long-term political direction. But leave one out, and the *status quo* will continue undisturbed. CPR

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Neumayr

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CRITICUS

Olla Podrida

BY G.B. TENNYSON

IT'S TIME again for the summer roundup, Criticus's annual *olla podrida* of oddities and outrages that is best eaten with a long spoon. In case you didn't know, an *olla podrida* is a Spanish dish "composed of pieces of many kinds of meat, vegetables, etc., stewed or boiled together," a hodge-podge, and therefore figuratively any sort of heterogeneous mixture, a medley, a jumble, and not always of the most savory kind. After all, the term translates literally as "putrid" or "rotten pot." How else describe the follies that come to Critical attention in his pursuit of the Good and True?

PC Watch

It was about a decade ago that Criticus in these pages felt obliged to explain to readers the meaning of the term "PC," revealing that it didn't signify solely personal computer. Since that time the term has come into such wide use that it seems to have been around forever. What is more, there are so many others who now regularly point out this or that PC excess that one is tempted to drop coverage of it altogether and leave it to talk radio and cable news hosts. But something always draws Criticus back to the topic, especially if he comes upon some PC-ism that has not been widely reported. Ergo ...

In the same spirit that some years ago moved China to rename Peking as Beijing, leaving that poor little flat-faced dog without a place of origin, and to transform Canton into Guangzhou, leaving Chinese restaurants more or less wordless, India has decided that it must throw off the yoke of colonialism fifty years after the fact and revert to the original names of its cities. Thus Bombay is now to be Mumbai and Calcutta is to be Kolkata. These are troublesome enough, but how can we possibly handle Madras as Chennai and Trivandrum as Thiruvananthapuram? Not that there has been much call outside India to speak of Trivandrum, but I for one will continue to refer to the Black Hole of Calcutta as just that. I think I may also stick with the Spanish names of two of the Balearic Islands that the tourist board there wants restored to their Catalan versions. Thus instead of Majorca they urge the use of Mallorca and for Ibiza they want Eivissa. No thanks. But across the world I would gladly see Ho Chi Minh City restored to Saigon.

In the early stages of the bombing of Afghanistan,

G.B. Tennyson is CPR's official Snapper-up of Unconsidered Trifles, which he saves for his annual putrid pot.

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PC-sharpened eyes caught a picture of a bomb the Navy was about to drop, on which bomb was an insulting message to the enemy written in the style that goes back at least to World War II. The PC-ers complained to the U.S. Navy, which in turn apologized and ordered commanders of "Operation Enduring Freedom" (*née* "Operation Eternal Justice," altered so as not to offend Muslims) never to permit such messages again. The AP release on the matter was itself so coyly correct that it described the message, which was obviously a reference to the September 11 hijackers, as reading: "'Hijack This' followed by an anti-gay slur." What was the slur? Goodness me, the sailors had actually written the word "Fags" on the bomb! Obviously not suitable for a family newspaper, and clearly insulting to Afghans.

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About six months later the *Los Angeles Times* ran a lengthy story on the widespread practice of homosexuality in Afghanistan, involving 50 percent or more of the male population. Most common is the practice of older men consorting with younger lads, preferably between the ages of 12 and 16. These latter are called *halekon,* and the more beautiful among them line their eyelids with kohl, color their nails with henna, and walk about in high-heeled sandals. Obviously they are far more fetching than women smothered in burkas. The *halekon* were much favored by the Taliban, including religious teachers, who often kept them in their *madrasas,* that is, their religious schools, where they could be conveniently accessed. Maybe the Navy bombers knew something after all.

FOR THEIR next bomb the Navy should consult with the Germans who have been asked to come up with a new name for homosexual "marriage," which recently became legal there. At present it is *"Eingetragene Lebenspartnerschaft,"* which is an eminently Teutonic but somewhat soulless "registered life partnership." The casual term is *Homo-Ehe* or "homo-marriage," which is thought rather undignified. But the Navy could probably confound its PC-watchers by writing on its bombs the following Critically created, multi-lingual nonce-formulation certain to baffle the PC-hawks: "Hijack This, You *halekonian uneingetragene Lebenspartners.*"

That standard processional at graduations everywhere, Sir Edward Elgar's *Pomp and Circumstance,* is also the regular closing hymn at the annual London Schools Prom night at the Royal Albert Hall, when all sing together to Elgar's music the words of *Land of Hope and Glory.* It was also sung by more than a million people outside Buckingham Palace on the Queen's Golden Jubilee. But the British organization appropriately known as NUT (National Union of Teachers) complained that the words were too jingoistic and triumphalist. So new words were written for last year's ceremony. Sing along, now, first with the original words, then try the revised version.

Land of Hope and Glory,
Mother of the Free
How shall we extol thee, who
are born of thee?
Wider still and wider shall thy
bounds be set;
God, who made thee mighty,
Make thee mightier yet!

Revised:

Music and our voices, Unite us all as one
Let our sound be mighty, Sung by everyone.
Deeper still and deeper shall our bounds be set.
Bring our world together, Make us closer yet.

It reminds one of Screwtape's final words to Wormwood who has failed to snare his victim and thus is now food for his mentor: "Your increasingly and ravenously affectionate uncle."

Meanwhile, Canadian feminists have found their own national anthem in need of revision. *O Canada* begins: "O Canada! Our home and native land!/True patriot love in all thy sons command." "Thy sons," say the critics is sexist and must go. No substitute was offered. Criticus offers one or two: "O Canada! Our home and native land!/True patriot love in boys and girls command." Or "True patriot love in guys and gals command." Or: "True patriot love in stags and does command." Or — well you get the idea.

Criticus also has some advice for the purveyors of a home security system that recently assaulted him with a flyer advertising their wares. Such Critical advice is

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to eschew this kind of absurd PC verbal overkill: "A burglar won't find your home an 'easy mark' if he or she is forced to work in the light, if he or she has to take a lot of time breaking in, and if he or she can't break in without making a lot of noise." Show me a she-burglar, and I'll show you a transvestite.

STUDENTS IN Spokane, Washington, have been obliged to drop their traditional halftime show, "The Death of Custer," because it is offensive to Indians, who are depicted in a "cartoonish" manner, according to complainants. Those performers dressed as Indians also render a war dance around the dead Custer. Or rather, they did. Henceforth there will be no Indians in the show, the band will dress as Custer troops or in cowboy attire, and the crowd will be lectured about American policy towards Indians at the Battle of Little Big Horn and told that Custer was a "self-proclaimed Indian killer." Presumably they will not be told that Indians were Custer-killers.

Back in West Virginia the PC Indians briefly prevailed upon the state's 4-H clubs to drop their traditional summer camp feature whereby members divide into four groups of Indian tribes — Cherokee, Delaware, Mingo, and Seneca — which compete in sporting events, wear Indian costumes, and gather in council circles round campfires in the evening, perform skits, sing songs, and even indulge in such outrages as calling boys "short braids" and girls "long braids," adults "Big Feet," and the camp director "Big Chief." Indian critics suggest that all this be dropped and that the 4-H-ers be taught about Indian "stewardship of the land," and Indian "spirituality and philosophy." If 4-H summer camp is going to be so boring, they may as well add lectures on Indian alcohol addiction as cautionary tales in a state famous for moonshine. Small chance, however, for now the federal government is looking into the matter, since the 4-H subsequently declined to play the game. If voluntary compliance continues to fail, the case may be handed to the Justice Department, which could in classic government style end the federal grant the 4-H program receives. Perhaps we can get Homeland Security on the case as well.

PC Abroad

Across the Pond an organization formerly known as the Spastics Society, now calling itself Scope (like the mouthwash), has issued a document listing unacceptable words relating to the disabled, including "the disabled," which should be "disabled people" (huh?). Words that should no longer be used in print, and presumably also not in speech, are "normal," "disease," "damage," "the blind," "the deaf," "cure," "afflicted," "suffers from," "weak," and "able-bodied." For the latter, you may substitute "non-disabled." And quite beyond words there is a body of opinion in dear old Blighty arguing against cocclear implants for the deaf on the grounds that such a procedure is "demeaning to the deaf community." Criticus knows of two recipients of such implants but rather doubts that either is prepared to give them back out of consideration for the "deaf community." We await a declaration from *CPR's* own Bill Saracino.

A female Tory Member of Parliament serving as shadow agriculture minister was removed from her position and sent to the back benches for telling a joke offensive to an ethnic minority. Lest the joke be lost to history, here it is. An Englishman, a Cuban, a Japanese, and a Pakistani were all on a train. The Cuban opened the window and threw out a fine Havana cigar. Asked why, he said, "They are ten-a-penny in my country." The Japanese man then threw out a Nikon camera, remarking, "They are ten-a-penny in my country." The Englishman then picked up the Pakistani and threw him out of the train window. Asked why, he said, "They are ten-a-penny in my country." Not actually uproarious, but it was told at a Rugby cup dinner and, if you've ever watched an English Rugby match, you will see that the joke doubtless struck just the right note.

IT REMINDS Criticus that even Rugby can seem sedate in comparison with Australian Rules football. A player in such a match recently was fined for having bitten off an opponent's testicle in a hotly contested scrum, or whatever it's called in football. And speaking of that, Criticus came across a hilarious account of an interview the BBC journalist John Simpson had with the abominable Idi Amin, which may be censored in a family publication like this one. Speaking as elliptically as possible, let us say that it involves the same anatomical item as in the Australian case, only with Amin it slipped out of his swimming trucks in front of the astonished interviewer who reported that it was the size of a honeydew melon. Presumably Amin suffered from (to use a forbidden phrase) some affliction (to use a forbidden word) that he chose not to have corrected in order not to offend the community of others with the same condition, the name for which I do not know, but I could coin one.

Some others seem already to have coined, if not a

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new term, then a new etymology for an old one. A British government minister was reproved for using the term "nitty-gritty" at a police conference. The director of the London metropolitan police told the offending minister that if he as a police officer had used the term, he would have been subject to a discipline charge. Why? It seems that the police have been informed that the term is racist in that it was "used to describe slaves in the lowest reaches of slave ships." Criticus thinks someone in the race industry is pulling the collective police leg. The term does appear to have originated in American Negro slang, but the earliest recorded date that three dictionaries I consulted have for it is in the 1960s, and they say the etymology is unknown. No word about slave ships. Dictionary dates, especially for slang, often lag behind actual use, but not centuries behind. Moreover, how would non-English speaking slaves chained to their oars during the Middle Passage have been able to understand what ye old British slaver above decks was saying, preserve it among themselves from 1617 on, and go public with it, so to speak, only in the 1960s? One could by a stretch just possibly imagine that pitiless slave ship captain John Newton talking about the nitty-gritty down below before repenting and composing "Amazing Grace" and "Glorious Things of Thee Are Spoken" but what were the Dutch and Portuguese slavers saying?

A body of opinion in dear old Blighty argues against cocclear implants as 'demeaning to the deaf community.'

No More Mascots, Please

Considering that Criticus believes himself to be the *fons et origo* of reporting on and excoriating the anti-mascot crusade, he should be allowed to continue it here. But what was virtually a lone voice a few years ago has been drowned out this past year by a media chorus, such that Criticus believes he can keep his mascot report briefer than usual. I assume that all readers have heard about the Fightin' Whities of Greeley, Colorado. If not, go back to May/June's *CPR* (p. 24) and read the witty verse by Joy Skilmer, which should tell you all you need to know.

In another reversal of fortune the bill offered in the California Assembly to ban the use of all ethnic and group names for teams was defeated once media coverage got on to it. The lunatic proposal by the weighty Jackie Goldberg was said by many to be liable to interpretation by the courts that would forbid not just Indian mascots but names like Normans, Vikings, Spartans, and even Hollywood High's unique Sheikhs, named after Rudolf Valentino. Perhaps running scared in expectation that the bill would pass, Cal State Sonoma dropped its forty-year old mascot, the Cossacks, and as of this fall is to be known as the Seawolves. Cossacks, you see, are "linked to barbarism and anti-Semitism," presumably because they participated in pogroms as loyal sons of the Czar. However, it's not so different with seawolves. My dictionary defines a seawolf variously as "a fabulous amphibious beast of prey," "a voracious sea-fish," and "a pirate, a sea-robber."

In his account of recent notable plagiarisms, somehow Criticus overlooked a case that was much discussed in Europe and has affinities with the spurious Belleisles account of gun ownership. That is, it is not a plagiary but a fiction passing as fact. The work is called *Fragments* and was purportedly written by one Binjamin Wilkomirski. It purports to be an account of time spent by a young Latvian-Jewish boy in the concentration camps. It won various prizes, including the U.S. National Jewish Book Award and the French *Prix Mémoire de la Shoah.* The work has been exposed as a fraud and its author revealed to be one Bruno Doessekker, a Swiss, who is neither Jewish nor a camp survivor. Understandably, actual survivors are especially bitter about such exploitation. Unfortunately some topics prove irresistible to certain kinds of huckster-hoaxsters. Remember the spurious *Hitler Diaries.*

Other similar topics have long remained *verboten,* but eventually some of them surface. The German Nobel prize-winning author Günter Grass, known for his unsparing criticism of Naziism and his general anti-right wing sentiments has recently published a new novel that dares to look at German suffering during WWII. To be titled "Crabwalking" when the English translation appears (*Im Krebsgang* in German), it uses the story of the sinking of a German refugee ship, the *Wilhelm Gustloff,* in the Baltic in the waning days of the war, with the loss of 9000 lives, mostly women and children, in what remains the

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deadliest disaster in the history of sea travel. And who knew about that? It was three times the number of deaths in the Trade Center attack and six times the number of deaths on the *Titanic*. Of course, the ruthless Russians were responsible, they who have escaped all postwar retribution except for having to live under the government they chose, which was almost punishment enough. Grass's novel is opening up the whole issue of German suffering, especially the displacement of 15 million Germans from ancestral lands in the east, of which number 2.5 million died. Grass notes that Germans have been reluctant to talk about such things for fear that they will seem to be detracting from the sufferings their own country brought on others and especially from the Holocaust. But innocent as well as guilty people can suffer on all sides in war, a lesson too easily forgotten. Dresden, anybody?

The Indian government argues that the caste system is based on social rather than biological differences and thus is not a form of racial discrimination.

LESS FORGIVING, the state government of Brandenburg has discovered and removed a forest of trees about 200 square feet in size planted in the Nazi period and never altered by Communist East Germany. In the autumn the trees show up as a swastika, albeit visible only from the air. The Swastika Trees, so to call them, are all larches planted in the midst of an evergreen forest. Only the larch trees turn color and thus form a giant yellow swastika against the green background. Yes, Keats's autumn is a "season of mists and mellow fruitfulness," but faces in Brandenburg are red.

Mellow fruitfulness may not be the tone of the proposed Jodi Foster film about the extraordinary life of Leni Riefenstahl, if indeed it actually ever goes forward. There have been protests from the usual suspects against making the film at all, but there has also been a withdrawal of cooperation from Riefenstahl when she came to believe that the film would be less than flattering. Instead, to mark her 100th birthday in August, Riefenstahl was set to release a new film, *Underwater Impressions*. (This statement was written before the fact, so Criticus does not know whether the film has appeared.) The film compiles footage from the more than 2000 scuba dives Riefenstahl made in the Indian Ocean from 1974 to 2000 when she ranged in age from seventy-two to ninety-eight! Not even the late Queen Mother was scuba-diving at age 98. Let's have a gin-and-tonic toast to both these indomitable women.

Closing Quotes

In India the caste system is alive and ill. A young man and woman were hanged one after the other from the roof of a house because they were lovers who came from different castes, his high, hers lower. Hundreds watched, including the parents of the hanged. Although the parents and several other persons involved were arrested, the Indian government continues to argue that the caste system is based on social rather than biological differences and thus is not a form of racial discrimination and intolerance. Criticus, ever ready with the dictionary, notes that the word *caste* is of Spanish and Portuguese origin where it means "race, lineage, breed" and that the definition of Indian caste is "a hereditary class." Furthermore, the original fourfold caste system was based on *varna,* the Sanskrit word for, what else? "color." Biology sèems to be lurking in there somewhere .... At the beginning of the year Criticus received from an upmarket grocery chain a flyer listing important dates throughout the year for giving flowers. Most were pretty obvious — Valentine's Day, Mother's Day, and the like — but, studying the list, Criticus is still puzzling over what flowers one is supposed to give on Good Friday .... The redoubtable Germaine Greer, who had in 1971 debated (and been hit on by) a young Clinton at Oxford, was invited by the mature President Clinton to join the festivities when he visited Warwick University in England some while back. She did, complained about the heavy security, the lack of food, and the way Bubba held her hand steadily and fixed his eyes unflinchingly upon her as they spoke, "which," she said, "everybody seems to find so hornifying." Not Greer, who opined, "He hasn't got any more charisma than any other reasonably fit fifty-something man with a red face and a nose like fuchsia fruit." As for Hillary, Greer remarked: "Hillary is a strange little person. I didn't get any eye contact with her. She's like a lizard sliding off a rock." These tough old feminists are good for something after all. CPR

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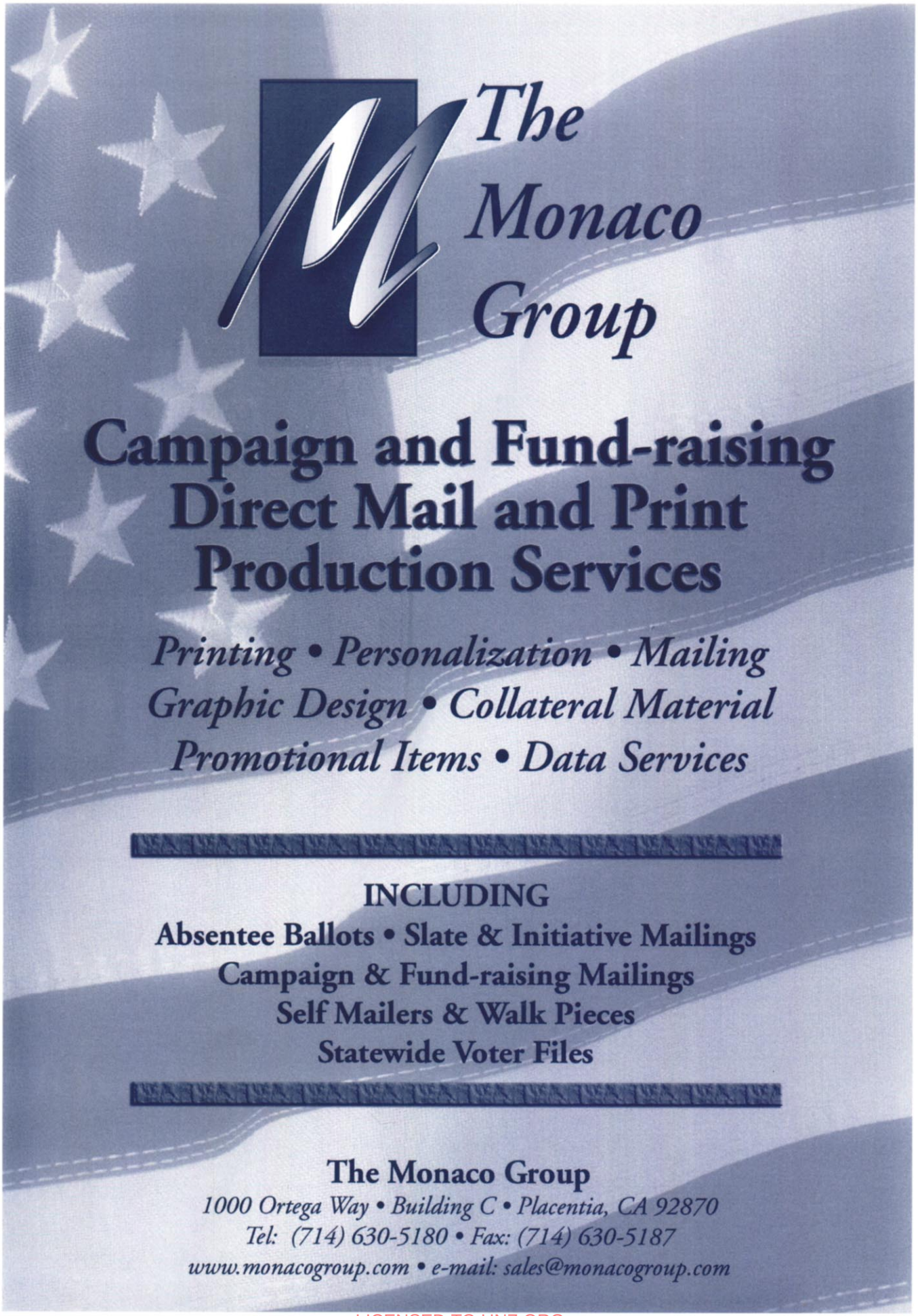
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